TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 600

THE UNITED STATES OF AMERICA, PETITIONER

vs.

GEORGE W. NORRIS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 24, 1936
CERTIORARI GRANTED FEBRUARY 1, 1937

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1 In United States District Court for the District of Nebraska, Lincoln Division

No. 1557—Criminal

United States of America, plaintiff

vs.

George W. Norris, defendant

2 *Indictment*

(Count One only)

Filed June 23, 1931

United States of America,
District of Nebraska, Lincoln Division, ss:

In the District Court of the United States within and for the Lincoln Division of the District of Nebraska in the Eighth Judicial Circuit.

The grand jurors of the United States of America, drawn from the territory comprising the Lincoln, Hastings, and McCook Divisions of the District of Nebraska, and sitting in the Lincoln Division of said District, in the term beginning the eleventh day of May, in the year nineteen hundred thirty-one, being first duly empanelled, sworn and charged by said court to inquire within and for said Divisions, upon their oaths do present.

That on the eighth day of April, in the year nineteen hundred thirty, the same being the calendar day of April 10, 1930, the Senate of the United States of America did adopt a certain Resolution (Senate Resolution Number 215), that is to say, a Resolution of the tenor following:

"Resolved, That a special committee consisting of five Senators, to be appointed by the Vice-President, is hereby authorized and directed to investigate the campaign expenditures of the various candidates for the United States Senate, the names of the persons, firms, or corporations subscribing, the amount contributed, the method of expenditure of said sums, and all facts in relation thereto, not only as to the subscriptions of money and expenditures thereof but as to the use of any other means or influence, including the promise or use of patronage, and all other facts in relation thereto which would not only be of public interest but which would aid the Senate in enacting any remedial legislation or in deciding any contest which might be instituted involving the right to a seat in the United States Senate.

"The investigation hereby provided for, in all the respects above enumerated, shall apply to candidates and contests before senatorial primaries, senatorial conventions and the contests and campaign terminating in the general election in November 1930.

"No Senator shall be appointed upon said committee from a state in which a Senator is to be elected in the general election in 1930.

3 "Said committee is hereby authorized to act upon ts own initiative and upon such information as in its judgment may be reasonable or reliable. Upon complaint being made before said committee under oath by any person, persons, senatorial candidate, or political committee, setting forth allegations as to facts which under this resolution it would be the duty of said committee to investigate, the said committee shall investigate such charges as fully as though it were acting upon its own motion, unless after a hearing upon such complaint the committee shall find that the allegations in said complaint are immaterial or untrue.

"Said committee is hereby authorized in the performance of its duties to sit at such times and places, either in the District of Columbia or elsewhere, as it deems necessary or proper. It is specifically authorized to require the attendance of witnesses by subpœna or otherwise; to require the production of books, papers, and documents; and to employ counsel, experts, clerical, and other assistants; and to employ stenographers at a cost not exceeding 25 cents per one hundred words.

"Said committee is hereby specifically authorized to act through any subcommittee authorized to be appointed by said committee. The chairman of said committee or any member of any subcommittee may administer oaths to witnesses and sign subpœnas for witnesses; and every person duly summoned before said committee, or any subcommittee thereof, who refuses or fails to obey the process of said committee or who appears and refuses to answer questions pertinent to said investigation shall be punished as prescribed by law.

"The expenses of said investigation, not exceeding in the aggregate $100,000, shall be paid from the contingent fund of the Senate on vouchers signed by the chairman of the committee or the chairman of any subcommittee.

"All hearings before said committee shall be public and all orders or decisions of the committee shall be public.

"The committee shall make a full report to the Senate on the first day of the next session of the Congress."

That thereafter, to-wit, on the seventeenth day of April, in the year nineteen hundred thirty, pursuant to said Resolution aforesaid, the Honorable Charles Curtis, Vice-President of the United States of America did appoint as members of said Special Committee on Senatorial Campaign Expenditures, the following members of the United States Senate:

Mr. Gerald P. Nye of North Dakota,
Mr. Porter H. Dale of Vermont,
Mr. C. C. Dill of Washington,
Mr. Roscoe C. Patterson of Missouri,
Mr. Robert F. Wagner of New York.

That thereafter, to-wit, on the eighteenth day of May, in the year nineteen hundred thirty, at a meeting of the members of said committee, at which four of the members of said committee, to-wit, Mr. Gerald P. Nye, Mr. Porter H. Dale, Mr. C. C. Dill, and Mr. Robert F. Wagner were present, action was taken by said committee as follows:

"A discussion of future procedure was had. The Chairman was unanimously authorized to act as a sub-committee and to appoint subcommittees of one or more members to hold hearings as in his judgment was desirable."

That the twelfth day of August, in the year nineteen hundred thirty, the same being the second Tuesday in August, was designated by the Laws of the State of Nebraska and by Honorable Arthur J. Weaver, Governor of the State of Nebraska, by Proclamation duly issued, for the holding of a Primary election for the nomination by the several political parties of candidates for different public offices to be voted for at the general election in the year nineteen hundred thirty. Among the officers to be elected at the said general election, nominations for which should be made at the said Primary election, as provided by law and by the Proclamation aforesaid, was that of one United States Senator from Nebraska.

More than forty days prior to the aforesaid Primary Election, an application had been duly filed in the office of the Secretary of State of the State of Nebraska, by and on behalf of George W. Norris of McCook, Nebraska, requesting that his name be placed upon the official ballot of the Republican party for the Primary election to be held on the twelfth day of August in the year nineteen hundred thirty, as a candidate for United States Senator, and an application had been duly filed in the office of the Secretary of State of the State of Nebraska by and on behalf of George W. Norris, of Broken Bow, Nebraska, requesting that his name be placed upon the official ballot of the Republican party for the Primary election to be held on the twelfth day of August, in the year nineteen hundred thirty, as a candidate for United States Senator, and a statement in writing was filed within the time fixed by law by W. M. Stebbins of Gothenburg, Nebraska, as provided by law, accepting a written application duly filed by sufficient qualified voters of the State of Ne-
5 braska, requesting that said W. M. Stebbins' name be placed upon the official Primary ballot of the Republican party for the Primary election to be held the twelfth day of August, in the year nineteen hundred thirty, as aforesaid, as a candidate for the office of United States Senator from Nebraska.

That the Honorable Gerald P. Nye was the chairman of said Special Committee, on Senatorial Campaign Expenditures aforesaid, and the Honorable Porter H. Dale, a member of said Special Committee, said Gerald P. Nye and Porter H. Dale having theretofore been appointed as a Sub-committee by said Chairman, Honorable Gerald P. Nye, by authority of said Resolution of the United States Senate and by authority of the said action of said Special Committee with reference to Sub-committees above set forth, on the twenty-second day of September, in the year nineteen hundred thirty, in the United States Court Room in the United States Court House and Post Office Building in the City of Lincoln, Lancaster county, in the State and District of Nebraska, entered into a public hearing, the Chairman of said Committee having deemed such hearing desirable, and therein began an inquiry and investigation regarding the campaign expenditures of the various candidates who were then or theretofore had been candidates for the office of United States Senator of Nebraska, and for the Republican nomination to said office as heretofore set forth.

That by force and authority of the Resolution aforesaid, said Special Committee on Senatorial Campaign Expenditures and the Subcommittee thereof, including said Sub-committee composed of the said Honorable Gerald P. Nye, Chairman, and Honorable Porter H. Dale, was empowered and directed to investigate the entire subject of campaign expenditures of or made in behalf of the various candidates for the United States Senate in the State of Nebraska and elsewhere, at the Primary and general elections held in said State of Nebraska and elsewhere, the names of the persons, firms, or corporations subscribing, the amount contributed, the method of expenditure of said sums, and all the facts in relation thereto not only as to the subscriptions of money and expenditure thereof but as to the use of any other means or influence including the promise or use of patronage and all other facts in relation thereto which would not only be of public interest, but which would aid the United States Senate in enacting any remedial legislation or to decide any contest which might be instituted involving the right to a seat in the said United States Senate.

6 And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That said Committee on Senatorial Campaign Expenditures, through said Sub-committee composed of said Honorable Gerald P. Nye and said Honorable Porter H. Dale, did in fact thereupon proceed in the State of Nebraska to exercise said authority conferred by said Resolution, and to make such investigation with a view to making such report, findings, and recommendations to the Senate on the matters and questions so referred to the said Committee, and then and there for that purpose did hold a hearing as above set forth at Lincoln, Lancaster county, Nebraska, and within the jurisdiction of this court, at which witnesses were examined and documents were

produced; that pursuant to authority of said Resolution, said Committee employed counsel and assistants to investigate matters in the State of Nebraska, and during the said hearing, the said Sub-committee directed inquiry to be made, and caused witnesses to be examined regarding campaign expenditures incident to the candidacy of the said several candidates for the office of United States Senator as aforesaid, and contributions made for or against the candidacy of the said candidates, and as to any money expended in that behalf by the witnesses called to testify at said hearing, and as to the activity of the said witnesses in the said Senatorial campaign, and the names of the persons, firms and corporations subscribing, the amount contributed to such campaign expenditures, and the method of such expenditures, and other facts relating thereto, and as to the use of other means indulged in the promotion of the candidacy of the said George W. Norris of Broken Bow, Nebraska, and the candidacy of one W. M. Stebbins of Gothenburg, Nebraska, and the candidacy of one George W. Norris of McCook, Nebraska, and in opposition to other candidates for the office of United States Senator before the Primary election as aforesaid, and other facts in relation thereto which would be of public interest, and which would aid the Senate of the United States in enacting remedial legislation, and in the deciding of any contests which might thereafter result incident to the election of a United States Senator in the State of Nebraska.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That on said twenty-second day of September, in the year nineteen hundred thirty, at Lincoln, in Lancaster county in the Lincoln Division of the District of Nebraska, Circuit aforesaid, and within the jurisdiction of this court, George W. Norris, late of Broken Bow, Nebraska, did appear in the United States Court Room of
7 the United States Court House and Post Office Building at Lincoln aforesaid, before a Sub-committee of the Special Committee on Campaign Expenditures of the United States Senate, as a witness, and did then and there take an oath before the Honorable Gerald P. Nye, United States Senator and a member and chairman of the said Special Committee on Campaign Expenditures as aforesaid, and a member of the Sub-committee conducting hearings at said time and place in the State of Nebraska, the said Gerald P. Nye having authority and jurisdiction under the laws of the United States of America, at said time and place to administer oaths to witnesses, that he, the said George W. Norris of Broken Bow, Nebraska, would testify truly in connection with the matters and questions then so under inquiry before the said Committee and Sub-committee, and that the said oath was duly administered to the said George W. Norris of Broken Bow, Nebraska, by the said Honorable Gerald P. Nye, who then and there was duly authorized by the Laws of the United States of America to administer said oath to said George W. Norris of Broken Bow, Nebraska, in that behalf.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that thereupon it became and was material to said injury before the Committee aforesaid, whether the said George W. Norris of Broken Bow, Nebraska, had received any money from anyone in this campaign (the campaign for nomination of United States Senator at the Primary election to be held on the twelfth day of August, in the year nineteen hundred thirty, meaning), [and whether the Fifty Dollars which he, the said George W. Norris of Broken Bow, Nebraska, paid his filing fee with, being the Fifty Dollars paid to the County Treasurer of Custer County, Nebraska, on July 2, 1930, was his own money, and whether said Fifty Dollars with which said filing fee was paid to the County Treasurer of Custer County, Nebraska, was derived and obtained by him, the said George W. Norris of Broken Bow, Nebraska, from his wages in the store in which he was employed,] or whether he, the said George W. Norris of Broken Bow, Nebraska, had received any assurance from anyone of financial support and backing, or of help in financing his campaign as a candidate for the United States Senate, [and whether one Victor Seymour did not make avail-
8 able any money for his, the said George W. Norris' campaign for nomination for United States Senator at the Primary election to be held the twelfth day of August, in the year nineteen hundred thirty, or whether the said Victor Seymour had made available any money to be expended in said campaign in behalf of said George W. Norris of Broken Bow, Nebraska, and whether the campaign statement purporting to be issued by said George W. Norris of Broken Bow, Nebraska, and which statement was published in the Custer County Chief, a newspaper published at Broken Bow, Nebraska, on July 8, 1930, a copy of which is attached hereto marked Exhibit A, and to which reference is hereby made as if fully set forth herein, was written by the said George W. Norris of Broken Bow, Nebraska, and whether anyone helped the said George W. Norris of Broken Bow, Nebraska, to write or prepare said statement and whether said statement, copy of which is marked Exhibit A and attached hereto, was mailed by said George W. Norris of Broken Bow, Nebraska, to A. Paul Johnson at Broken Bow, Nebraska.]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That the said George W. Norris of Broken Bow, Nebraska, in response to questions propounded to him by said Honorable Gerald P. Nye and Honorable Porter H. Dale, or one of them, and which said questions and each of the same asked by said Gerald P. Nye or Porter H. Dale were material to the matters then under inquiry by said Honorable Gerald P. Nye and the Sub-committee aforesaid and said Committee on Campaign Expenditures of the United States Senate, and each of them, said George W. Norris of Broken Bow,

The indictment as submitted by the trial court to the jury did not include the parts of the indictment included within the brackets.

Nebraska, having taken the oath as a witness aforesaid, to testify truly, then and there unlawfully and feloniously did wilfully, corruptly, falsely, and contrary to his said oath, testify to matters material to the questions then and there under inquiry, which he, the said George W. Norris of Broken Bow, Nebraska, did not believe to be true, in that he, the said George W. Norris of Broken Bow, Nebraska, did testify in substance and effect that he, the said George W. Norris of Broken Bow, Nebraska, had not received any money from anyone in this campaign (the campaign for nomination of United States Senator at the Primary election to be held the twelfth day of August, in the year nineteen hundred thirty, meaning), [and that the Fifty Dollars which he, the said George W. Norris of
9 Broken Bow, Nebraska, paid his filing fee with (the filing fee of Fifty Dollars paid to the County Treasurer of Custer County, Nebraska, on July 2, 1930, meaning), was his own money, and derived and obtained by him, the said George W. Norris of Broken Bow, Nebraska, from his wages in the store in which he was employed,] and that he, the said George W. Norris of Broken Bow, Nebraska, had received no assurance from anyone of financial support and backing, or of help in financing his campaign as a candidate for the United States Senate, [and that one Victor Seymour did not make available any money for his, the said George W. Norris', campaign for nomination for United States Senator at the Primary election to be held the twelfth day of August, in the year nineteen hundred thirty, or any money to be expended in said campaign in behalf of said George W. Norris of Broken Bow, Nebraska, and that the campaign statement purporting to be issued by said George W. Norris of Broken Bow, Nebraska, and which said statement was published in the Custer County Chief, a newspaper published at Broken Bow, Nebraska, on July 8, 1930, a copy of which is attached hereto marked Exhibit A, and to which reference is hereby made as fully as if set forth herein, was written by the said George W. Norris of Broken Bow, Nebraska, and that no one helped him to write or prepare said statement aforesaid, and that said statement was mailed by said George W. Norris of Broken Bow, Nebraska, to A. Paul Johnson at Broken Bow, Nebraska,] and which testimony aforesaid was material to the matters then and there under inquiry, whereas in truth and in fact the testimony so given by said George W. Norris as aforesaid, was false, as he, the said George W. Norris of Broken Bow, Nebraska, then and there well knew, in that he, the said George W. Norris of Broken Bow, Nebraska, had received from A. Paul Johnson, the sum of Fifty Dollars ($50.00), the exact description and denominations of which are to the grand jurors aforesaid, unknown, for use in paying to the County Treasurer of Custer County, Nebraska, his, the said George W. Norris', filing fee as a candidate for the office of United States Senator, [and which money the said George W. Norris of Broken Bow, Nebraska, knew had been delivered to said A. Paul Johnson by Victor Seymour:] and said

testimony was false as he, the said George W. Norris of Broken Bow, Nebraska, then and there well knew, in that said George W. Norris of Broken Bow, Nebraska, had received from A. Paul Johnson, a United States Government Bond in the sum of Five Hundred Dollars ($500.00), a more exact description of which is to the
10 grand jurors aforesaid, unknown, to enable him, the said George W. Norris of Broken Bow, Nebraska, to carry on a campaign for the United States Senate, and was delivered to him, the said George W. Norris of Broken Bow, Nebraska, because of his filing as a candidate for the United States Senate; and said testimony was false, as he, the said George W. Norris of Broken Bow, Nebraska, then and there well knew, in that said George W. Norris of Broken Bow, Nebraska, had received assurance communicated to him, the said George W. Norris of Broken Bow, Nebraska, through A. Paul Johnson, of financial backing in his campaign aforesaid; [and said testimony was false, as he the said George W. Norris of Broken Bow, Nebraska, then and there well knew, in that said campaign statement aforesaid was prepared by Victor Seymour and others to the grand jurors aforesaid unknown, and was not prepared by said George W. Norris of Broken Bow, Nebraska, and was mailed to A. Paul Johnson at Broken Bow, Nebraska, by said Victor Seymour of Lincoln, Nebraska.]

And so the grand jurors aforesaid, upon their oaths aforesaid, do present:

That he, the said George W. Norris of Broken Bow, Nebraska, heretofore, to-wit, on the said twenty-second day of September, in the year nineteen hundred thirty, and at and in the City of Lincoln, Lancaster County, in the Lincoln Division of the District of Nebraska, Circuit aforesaid, and within the jurisdiction of this court, having taken an oath as aforesaid, before a competent tribunal, officer, and person, in a case and matter in which a Law of the United States of America authorized an oath to be administered, that he, the said George W. Norris of Broken Bow, Nebraska, would testify truly, then and there unlawfully and feloniously did wilfully, falsely, corruptly, and contrary to such oath, testify to material matters as aforesaid, which he then and there did not believe to be true, and which he then and there knew to be false, and which then and there were false, as aforesaid, and thereby in the manner and form aforesaid, then and there became and was guilty of wilful and corrupt perjury, contrary to the form of statute in such case made and provided, and against the peace and dignity of the said United States of America.

CHARLES E. SANDALL,
United States Attorney.
By ROBERT VAN PELT,
Assistant United States Attorney.

11 (Endorsed On Back Of Indictment:) No. 1557 Crim. United States District Court, District Of Nebraska, Lincoln Division—The United States Of America vs. George W. Norris of Broken

Bow, Nebraska—Indictment—Perjury—A true bill, E. P. Dunlap, Foreman—Presented in open court by the Grand Jury and Filed June 23, 1931. R. C. Hoyt, Clerk, J. B. Nickerson, Deputy; Filed in Lincoln Division Jun. 23, 1931, R. C. Hoyt, Clerk, by J. B. Nickerson, by J. B. Nickerson, Deputy.

In United States District Court

Demurrer of defendant to indictment

Filed August 13, 1931

The defendant, George W. Norris, demurs to the indictment herein and to each of the two counts thereof, for the following reasons, to-wit:

1. That the testimony, which the indictment alleges to have been given by the defendant, was not given in any case in which a law of the United States authorized an oath to be administered.

2. The statements contained in the said indictment and in each of the counts thereof, are insufficient to constitute any crime or offense under the laws of the United States.

3. The resolution adopted by the Senate of the United States as set forth in said indictment purports to grant to the Senate Committee therein named powers in excess of those which could be so granted to such committee under the provisions of the Constitution of the United States and particularly the provisions of Section 4, Article 1, of said Constitution, relating to the control of the election of United States Senators.

4. The adoption of the resolution by the Senate of the United States and the inquiry purported to have been conducted in pursuance thereof, as set forth in said indictment, constitutes an usurpation of power reserved by the Constitution to the several states.

5. The resolution adopted by the United States Senate, as set forth in said indictment, does not empower the committee authorized to be appointed thereunder to make any investigation of the matters therein enumerated prior to the holding of the senatorial primaries in Nebraska on August 13, 1930.

6. Senators Gerald P. Nye and Porter H. Dale were wholly
12 without jurisdiction, right, or authority to administer an oath to this defendant, or to ask questions of him or to inquire of this defendant pertaining to any of the matters set forth in the indictment.

7. The inquiry so conducted by the said Gerald P. Nye and Porter H. Dale as set forth in the indictment was unauthorized and illegal.

8. The statements which it is alleged this defendant testified to in the indictment are immaterial and redundant matters and not sufficient to constitute any crime or offense under the provisions of any laws of the United States.

9. The statements as alleged in said indictment are wholly immaterial as a basis of any charge of perjury against this defendant.

10. The questions asked by the said Senators Gerald P. Nye and Porter H. Dale and which elicited the answers purported to be set forth in the said indictments, were not questions, and the said answers were not answers, pertinent to any inquiry authorized by said resolution or by any authority or power confered upon said Senators Gerald P. Nye and Porter H. Dale.

11. The inquiry conducted by Senators Gerald P. Nye and Porter H. Dale which elicited the statements alleged to have been made by this defendant in said indictment, insofar as they related to matters in connection with the senatorial primary in Nebraska for 1930, was an illegal inquiry.

12. The inquiries propounded to this defendant and the answers elicited from him by said inquiries, pertaining to a campaign statement published in the Custer County Chief, a newspaper published at Broken Bow, Nebraska, and in regard to the same being written by this defendant without the help of any other person and with reference to the transmission of the same through the mail and with reference to any assurance communicated to this defendant in regard to financial backing of any campaign by him, and with references to contributions to any senatorial campaign by defendant, were all wholly irrelevant, immaterial, and redundant matters and concerning which it was not within the power of any Committee of the United States Senate or of Senators Gerald P. Nye and Porer H. Dale to make inquiry.

13. The matters alleged in the indictment to have been testified to by this defendant in the second count of said indictment are matters wholly immaterial, redundant and irrelevant to any inquiries which said Senate Committee or Senators Gerald P. Nye or Porter H. Dale might make, and were also matters beyond the power or right or authority of any such Committee or of said Senators to inquire into.

GEORGE W. NORRIS,
Defendant.

By WM. E. SHUMAN,
His Attorney.

In United States District Court

Order overruling demurrer to indictment

Entered December 23, 1931

It is here ordered, That defendant's demurrer to the first Count of the Indictment presented against him, heretofore submitted, be, and the same is here overruled, to which ruling of the Court, defendant excepts.

In United States District Court

Arraignment and plea of not guilty; jury empaneled; Trial, December 9, 1935

Entered December 9, 1935

The defendant George W. Norris, appears at the bar of this Court, personally, and with his attorneys, William E. Shuman and Bert L. Overcash of North Platte, Nebraska, and waives the reading of the Indictment presented by the Grand Jury and filed herein against him on the 23d day of June 1931, charging him with Perjury, stating that he knows the nature of the charge against him, and enters his plea of Not Guilty thereto.

Thereupon, the cause comes on regularly for trial, the plaintiff United States of America, appearing by its attorneys Joseph Votava, United States Attorney for the District of Nebraska, and Barlow Nye, Assistant United States Attorney for said District, and the defendant George W. Norris appearing by his attorneys, the said William E. Shuman and Bert L. Overcash; and it appearing that the regular panel of jurors has been exhausted, the Court orders the Marshal to summon talesmen, and one talesman, Charles E. Booth, is sworn in, and the following persons are duly empaneled and sworn to try said cause, that is to say: J. W. Hudson, John Litty, Fred Kerl, William Reichert, Wiley Sandusky, W. D. Potter, Fred W. Bontz, Theo. Damme, Chas. E. Booth, Milo Bowen, Ross Brown, Richard Fuerst.

14 Opening statements are made by the respective counsel, and testimony is adduced in part. At the hour of five o'clock P. M., the trial not being concluded, further proceedings herein are continued until 9:30 A. M., on Tuesday, December 10, 1935.

In United States District Court

Trial, December 10, 1935

Entered December 10, 1935

On this day again come the parties herein, by their respective counsel, also come the jury heretofore empaneled and sworn to try said cause, and the trial proceeds. Further testimony is adduced, and at the hour of five o'clock P. M., the trial not being concluded, further proceedings herein are continued until 9:30 A. M., on Wednesday, December 11, 1935.

In United States District Court

Trial, December 11, 1935

Entered December 11, 1935

On this day again come the parties herein, by their respective counsel, also come the jury heretofore empaneled and sworn, and the trial proceeds. Further testimony is adduced, and thereupon, plaintiff and defendant rest.

The hour of adjournment having arrived, further proceedings herein are continued until 9:30 A. M., on Thursday, December 12, 1935.

In United States District Court

Trial, December 12, 1935; verdict

Entered December 12, 1935

On this day again comes the parties herein, by their respective counsel, also come the jury heretofore empaneled and sworn to try said cause. The jury hears the arguments of the respective counsel, receives the instructions of the Court, and at the hour of two o'clock and thirty minutes past noon, retires to deliberate.

Afterwards, on this same day, the jury comes into Court at the hour of ten o'clock and fifteen minutes past noon, and by their foreman, and in their presence, returns its verdict in words and figures following, to-wit:

15 "Verdict

"District Court of the United States for the District of Nebraska, Lincoln Division

"No. 1557—Criminal

"UNITED STATES OF AMERICA

"*vs.*

"GEORGE W. NORRIS

"Verdict

"We, the jury, duly empaneled and sworn to try the issues joined in the above entitled cause do find the said defendant, George W. Norris, Guilty in manner and form as charged in the indictment therein.

FRED H. KERL, *Foreman.*"

Thereupon the jury is discharged from further service in the matter and the case is passed until January 2, 1936, for sentence and other proceedings.

In United States District Court

Motion for new trial

Filed December 13, 1935

The defendant, George W. Norris, moves the court for an order setting aside the verdict and granting a new trial in the above entitled action, for the following reasons, to-wit:

1. The court erred in overruling the motion of the defendant to quash the indictment.

2. The court erred in overruling the plea in abatement of the defendant.

3. The court erred in overruling the demurrer of the defendant.

4. The court erred in overruling the motion of the defendant at the conclusion of the evidence for the Government to direct a verdict for the defendant.

5. The court erred in overruling the motion of the defendant made at the conclusion of all the evidence to direct a verdict for the defendant.

6. The court erred in submitting to the jury Count One of the indictment for the reasons that:

(a) The matters and things therein stated are insufficient to charge a crime or offense under the laws of the United States.

16 (b) The proof adduced by the prosecution was insufficient to establish beyond a reasonable doubt that the defendant's answer to the questions referred to in the indictment were false and in any way constituted the crime of perjury.

(c) That the said matters referred to in the said indictment and the answers of the defendant to the questions offered to sustain the said charges in the indictment were foreign, irrelevant, immaterial to, and beyond the scope and power of the investigation in which said evidence was elicited.

7. The court erred in the overruling of objections to the admission in evidence of the testimony of A. Paul Johnson, pertaining to any conversations and transactions between said witness and the defendant for the reason that the said A. Paul Johnson was the attorney for the defendant, the communications were confidential and the defendant did not waive the privileged character of said communications.

8. The court erred in denying to the defendant the right to prove that after he had first given his testimony before the said Senate Committee, he inquired of his attorney if he could and should return to the witness stand and correct his testimony and that said defendant was advised that he could and should so return to the stand and correct his testimony, and that he acted upon the advice of said attorney but was not permitted to show these facts in evidence.

9. The court erred in rejecting the evidence offered by the defendant to the effect that the chairman of said sub-committee, Senator

Gerald P. Nye, when the defendant had been asked and answered the last question put to him, stated to the defendant "The Chair is prepared to announce it does not care to hear any more testimony from Mr. Norris."

10. The court erred in refusing to permit the defendant to testify that he was ready and willing to testify before said Senate Committee and to correct any and all errors or omissions in any of his former evidence.

11. The court erred in refusing to give to the jury instruction number 1 tendered by the defendant.

12. The court erred in refusing to give to the jury instruction number 2 tendered by the defendant.

13. The court erred in refusing to give to the jury instruction number 3 tendered by the defendant.

17 14. The court erred in refusing to give to the jury instruction number 4 tendered by the defendant.

15. The court erred in refusing to give to the jury instruction number 5 tendered by the defendant.

16. The court erred in refusing to give to the jury instruction number 6 tendered by the defendant.

17. The court erred in submitting to the jury that portion of the indictment wherein it was charged the defendant falsely testified that he had received no assurance from anyone of financial support and backing or of help in financing his campaign as a candidate for the United States Senate, for the reason that there was only one witness who testified to any facts to sustain this allegation of the indictment and there was no other evidence to corroborate in any way the testimony of said witness, and said witness being A. Paul Johnson.

18. The court erred in refusing to permit the defendant to show by the evidence that the defendant at the hearing of said Senate Committee and while the matter was yet pending before it and before any action was taken by said Senate Committee, corrected and offered to correct all former testimony given by said defendant before said Senate Committee.

19. The verdict of the jury is contrary to the evidence.

20. The verdict of the jury is contrary to the law.

WM. E. SHUMAN,
BERT L. OVERCASH,
Attorneys for Defendant.

In United States District Court

Order overruling motion for new trial; judgment

Entered January 2, 1936

The defendant George W. Norris, appears at the bar of this Court, personally, and with his counsel, William E. Shuman, he having

heretofore, on the 12th day of December, 1935, been convicted of the crime of Perjury as charged in an Indictment presented by the Grand Jury and filed herein against him on the 23d day of June, 1931, and having filed his Motion for New Trial, said motion is submitted, and, by the Court, overruled, to which ruling, exception is allowed to the defendant, George W. Norris.

And said defendant, George W. Norris, being asked whether
18 he has any legal reason why sentence and judgment should not be pronounced against him, and he being heard in that behalf, and no cause being shown, it is by the Court

Considered, ordered, and adjudged, That said defendant George W. Norris, be, and he is hereby, sentenced to pay a fine of One Hundred ($100.00) Dollars, and be imprisoned in jail for a period of three months.

In United States District Court

Notice of appeal

Filed January 2, 1936

The name and address of appellant is George W. Norris, Alva, Oklahoma.

1. The names and addresses of appellant's attorneys are Wm. E. Shuman and Bert L. Overcash, North Platte, Nebraska.

2. The offense charged is perjury.

3. The date of the judgment is January 2, 1936.

4. A brief description of the judgment or sentence is that defendant was sentenced to imprisonment for three months and to pay a fine of $100.00.

5. The name of the prison where defendant is now confined, if not on bail, is _____ Defendant has been admitted to bail.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Eight Circuit, from the judgment above mentioned on the grounds set forth below.

Dated at Lincoln, Nebraska, January 2, 1936.

GEORGE W. NORRIS,
Appellant.

Grounds of appeal

(a) The Court erred in overruling the motion of the defendant to quash the indictment.

(b) The Court erred in overruling the plea in abatement.

(c) The Court erred in overruling the demurrer of the defendant.

(d) The Court erred in overruling the motion of the defendant to direct a verdict at the conclusion of the evidence
19 for the Government and also at the conclusion of all of the evidence offered in the case.

(e) The Court erred in submitting to the jury Count One of the indictment.

(f) The Court erred in overruling objections to the admission of evidence of the testimony of A. Paul Johnson pertaining to conversation and transactions between said witness and the defendant for the reason that the said A. Paul Johnson was the attorney for the defendant and the communications were confidential.

(g) The Court erred in denying the defendant the right to prove, after he had given his first testimony before the Senate Sub-Committee, that he inquired of his attorney if he could return to the witness stand and correct his testimony, and that he was advised by said attorney that he could and should return to the stand and correct his testimony.

(h) The Court erred in not receiving the evidence offered by the defendant that the chairman of said sub-committee, Senator Gerald P. Nye, after the defendant had given his evidence, stated to said defendant, "The Chair is prepared to announce it does not care to hear any more testimony from Mr. Norris."

(i) The Court erred in refusing to give to the jury instructions numbered 1, 2, 3, 4, 5, and 6, tendered by the defendant.

(j) The verdict of the jury is contrary to the evidence.

(k) The verdict of the jury is contrary to the law.

WM. E. SHUMAN,
Attorney for Defendant.

JAN. 2, 1936.

Received copy of the within Notice this date.

BARLOW NYE,
Ass't U. S. Attorney.

Duplicate notice of appeal filed in Appellate Court

Memorandum of Clerk of U. S. Circuit Court of Appeals:
The duplicate copy of the Notice of Appeal and Grounds thereof were filed in the Clerk's Office of the U. S. Circuit Court of Appeals on January 3, 1936, and are omitted from this printed record to avoid duplication. The case was docketed in the United States Circuit Court of Appeals for the Eighth Circuit on January 8, 1936.

20 In United States District Court

Order granting time to file bill of exceptions and assignment of errors, etc.

Filed and entered January 2, 1936

A notice of appeal having been filed by the defendant George W. Norris in this case and notice thereof having been given to the court and a bond to cover bail and costs on the appeal having been furnished by the defendant, and the parties having appeared before the court for such directions as to the preparation of the record on

appeal as may be appropriate, it is ordered that the appellant shall within 90 days from this date prepare and present for settlement to the judge of this court his proposed bill of exceptions, and that the appellant shall thereafter file with the clerk of this court the bill of exceptions within 2 days after such bill of exceptions is finally settled and allowed, and that the appellant shall file with the clerk of this court an assignment of errors of which the appellant complains, on or before the time when the allowed bill of exceptions is filed with the clerk. When the proposed bill of exceptions is presented to the judge for settlement, an order will be made fixing a time within which proposed amendments or objections thereto may be made and a further order will be made fixing a time for a hearing as to any objections or amendments, before the final settlement and allowance of the bill of exceptions. The bill of exceptions shall conform to the provisions of Rule 8 of the Supreme Court of the United States which reads as follows:

"The judges of the district courts in allowing bills of exception shall give effect to the following rules:

"1. No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

"2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise."

Dated: Jany. 2, 1936.

THOS. C. MUNGER, *Judge.*

21 See Supreme Court rules as to proceedings in criminal cases after verdict Nos. III, VI, VII, VIII, IX, XIII, United States Circuit Court of Appeals Rules for the 8th Circuit Nos. 10, 35, 36, 37.

[Bond on appeal for $1,500.00 approved and filed Jan. 2, 1936, omitted in printing.]

22 In United States District Court

Assignment of errors

Filed March 10, 1936

The defendant herein, George W. Norris, herewith files the following Assignment of Errors, upon which he will rely in his prosecution of the appeal in the above entitled cause, from the orders, rulings,

verdict, and judgment made by the District Court of the United States for the District of Nebraska, Lincoln Division, in said case.

1. The Court erred in overruling the demurrer of the defendant.

23 2. The Court erred in overruling the motion of the defendant at the conclusion of the evidence for the Government to direct a verdict for the defendant.

3. The Court erred in overruling the motion of the defendant made at the conclusion of all the evidence to direct a verdict for the defendant.

4. The verdict of the jury is contrary to the evidence.

5. The verdict of the jury is contrary to the law.

6. The Court erred in rejecting that portion of the evidence of the witness William M. Day, wherein said witness testified that Senator Nye, the Chairman of the Sub-committee of the United States Senate, before which committee the defendant herein was a witness, stated to the witness after he had answered the last question which they would permit him to answer, that

"The Chair is prepared to announce it does not care to hear any more testimony from Mr. Norris."

To this offer objections, ruiings thereon by the Court, and exceptions were as follows:

"Mr. Votova. The government objects to the offer of same as incompetent and immaterial, not tending to prove or proving any defense to the charges in the indictment, asking for a conclusion, and in support of the objection we refer to the record made to the first offer of Exhibit 10 as contained on pages 301 and 305.

"The Court. I will reserve ruling on that."

Later defendant re-offered this same evidence, to which plaintiff objected as follows:

"Mr. Votova. Objected to as incompetent and immaterial, not tending to disprove any of the charges in the indictment and hearsay and self-serving.

"The Court. I think it is immaterial.

"To which ruling of the court the defendant then and there duly excepted.

"Mr. Shuman. We offer to prove by the witness on the stand that the Senator Nye presiding as Chairman on this occasion at the time stated made the statement, 'And the Chair is prepared to announce that it does not care to hear any more testimony from Mr. Norris.'

"Mr. Votova. We object to the offer for the same reason.

24 "The Court. Sustained.

"To which ruling of the court the defendant then and there duly excepted."

7. The Court erred in refusing to permit the defendant to answer the question noted below in this paragraph and in rejecting the offer of the defendant to prove the said matter, all of which pertained to evidence which had been given by the defendant before the said Senate Sub-Committee, and the question and answer referred to, the

offer to prove the objections thereto, the ruling of the Court and the exceptions thereto are as follows:

"Q. After you had taken counsel with me and I had advised you in regard to the subject of whether you could go back and correct your testimony, I will ask you to state whether or not you were ready and willing to answer any question that they might ask you correctly and fully when you returned to the witness stand?

"Mr. VOTOVA. Objected to as incompetent and immaterial.

"The COURT. Sustained.

"To which ruling of the court the defendant then and there duly excepted.

"Mr. SHUMAN. Did your Honor have some other rulings in reserve?

* * * * * * *

"The COURT. Yes, there was one that is not covered. You offered to show that the defendant was ready and willing to make any and all changes in his testimony. I will sustain the objection as to that.

"To which ruling of the court the defendant then and there duly excepted."

8. The Court erred in refusing to give to the Jury instruction number one tendered by the defendant.

9. The Court erred in refusing to give to the Jury instruction number two tendered by the defendant.

10. The Court erred in refusing to give to the Jury instruction number three tendered by the defendant.

11. The Court erred in refusing to give to the Jury instruction number four tendered by the defendant.

12. The Court erred in refusing to give to the Jury instruction number five tendered by the defendant.

25 13. The Court erred in refusing to give to the Jury instruction number six tendered by the defendant.

14. The Court erred in submitting to the Jury, after it had retired to deliberate upon its verdict, the indictment herein, in the form in which the Court did submit the same to the Jury and which contained a submission to the Jury of the question of whether or not the defendant committed perjury when he testified that

"he had not received any money from anyone in this campaign (the campaign for nomination of United States Senator) to the primary election to be held on the twelfth day of August, in the year Nineteen Hundred and Thirty."

15. The Court erred in submitting to the Jury, after it had retired to deliberate upon its verdict, the indictment herein, in the form in which the Court did submit the same to the Jury and which contained a submission to the Jury of the question of whether or not the defendant committed perjury when he testified that he

"had received no assurance from anyone of financial support and backing or of help in financing his campaign as a candidate for the United States Senate."

Wherefore the defendant prays that the verdict and judgment of the District Court herein be reversed and the defendant discharged.

GEORGE W. NORRIS,
Defendant.
By WM. E. SHUMAN,
BERT L. OVERCASH,
His Attorneys.

LINCOLN, NEBRASKA, *March 10, 1936.*

Received copy of the foregoing Assignment of Errors.

BARLOW NYE,
Assistant United States District Attorney.

26 In District Court of the United States for the District of Nebraska, Lincoln Division

No. 1557—Criminal

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GEORGE W. NORRIS, DEFENDANT

Bill of exceptions

Be it remembered that on December 9, 1935, the above entitled case was called for trial in the above entitled court, Honorable Thomas C. Munger, Judge, presiding. Jury was empaneled and sworn, and the trial proceeded as follows:

Appearances: For plaintiff, Joseph T. Votava, United States District Attorney; Barlow Nye, Assistant United States District Attorney. For defendant, Wm. E. Shuman, Bert L. Overcash.

The plaintiff offers in evidence Exhibits 1, 2, 3, 4, 5, 6, and 7, all of which exhibits were in due and proper form and were received in evidence and they being as follows:

Exhibit 1 is a duly authenticated copy of Senate Resolution Number 215 agreed to by the Senate of the United States on April 10, 1930, same being in part as follows:

Plaintiff's Exhibit 1

"Resolved, That a special committee, consisting of five Senators, to be appointed by the Vice-President, is hereby authorized and directed to investigate the campaign expenditures of the various candidates for the United States Senate, the names of the persons, firms, or corporations subscribing, the amount contributed, the method of expenditure of said sums, and all facts in relation thereto, not only as to the subscriptions of money and expenditures thereof but as to the use of any other means or influence, including the promise or use of patronage, and all other facts in relation thereto which would

not only be of public interest but which would aid the Senate in enacting any remedial legislation or in deciding any contest which might be instituted involving the right to a seat in the United States Senate.

"The investigation hereby provided for, in all the respects above enumerated, shall apply to candidates and contests before Sena-
27 torial primaries, senatorial conventions, and the contests and campaign terminating in the general election in November 1930. * * *

"Said committee is hereby authorized to act upon its own initiative and upon such information as in its judgment may be reasonable or reliable. * * *

"Said committee is hereby authorized in the performance of its duties to sit at such times and places, either in the District of Columbia or elsewhere, as it deems necessary or proper. * * *

"Said committee is hereby specifically authorized to act through any sub-committee authorized to be appointed by said committee. The chairman of said committee or any member of any sub-committee may administer oaths to witnesses and sign subpoenas for witnesses; and every person duly summoned before said committee, or any sub-committee thereof, who refuses or fails to obey the process of said committee or who appears and refuses to answer questions pertinent to said investigation shall be punished as prescribed by law."

This resolution has been set forth in full in this transcript, as a part of the indictment, on pages 5 to 15. The certificate to Exhibit 1 also sets forth that:

"as shown by the official records of the Senate, the said committee was on April 17, 1930, composed of the following Senators, namely: Mr. Gerald P. Nye, of North Dakota; Mr. Porter H. Dale, of Vermont; Mr. C. C. Dill, of Washington; Mr. Roscoe C. Patterson, of Missouri; and Mr. Robert F. Wagner, of New York; and that said committee and said membership continued until the termination of said committee's existence by the terms of Senate Resolution 381, on Monday, January 3, 1932."

Exhibit 2 is a duly authenticated copy of extracts from the Senate Journal showing the appointment by the Vice President of the members of the committee and shows that the committee on April 17, 1930, was composed of the Senators named in the certificate, which is a part of Exhibit 1, same being as follows:

Plaintiff's Exhibit 2

Extract from Senate Journal, Calendar Day, Thursday, April 10 (Legislative Day, April 8), 1930, Page 269:

"The Vice President subsequently appointed Mr. Johnson, Mr. Goldsborough, Mr. Patterson, Mr. Pittman, and Mr. Wagner as the members of the foregoing committee."

28 Extracts from Senate Journal, Monday, April 14, 1930, page 274:

"The Vice President appointed Mr. Nye and Mr. Dill as members of the special committee created under Senate Resolution 215 to make investigation into the campaign expenditures of candidates for the United States Senate, vice Mr. Johnson and Mr. Pittman, respectively, excused."

Extract from Senate Journal, Wednesday, April 16 (Legislative Day, April 14), 1930, Page 282:

"The Vice President appointed Mr. Bingham as a member of the special committee, created under Senate Resolution No. 215, to make investigation into the campaign expenditures of candidates for the United States Senate, vice Mr. Goldsborough, excused.

"Mr. Bingham subsequently resigned as a member of the foregoing committee."

Extract from Senate Journal, Thursday, April 17, 1930, Page 285:

"The Vice-President appointed Mr. Dale as a member of the special committee, created under Senate Resolution 215, to make investigation into the campaign expenditures of candidates for the United States Senate, vice Mr. Bingham, resigned.

"Then comes the attestation of the Secretary of the Senate and the seal of the United States Senate."

Plaintiff's Exhibit 3

Exhibit 3 is a duly authenticated copy of the proclamation by the Governor of Nebraska issued on June 5, 1930, directing that a Primary Election be held in the several voting precincts throughout the State of Nebraska on August 12, 1930, for the purpose of nominating candidates by each political party for one United States Senator, for State Railway Commissioner, and other offices to be filled at the general election in November, 1930.

Plaintiff's Exhibit 4

Exhibit 4 is a duly authenticated copy of the application of George W. Norris of McCook, Nebraska, requesting that his name be placed upon the official primary ballot of the Republican party for
29 the primary election to be held on August 12, 1930, as a candidate for Senator of the United States for Nebraska, filed with the Secretary of State of the State of Nebraska on January 11, 1930, accompanied by a receipt showing that the said George W. Norris had duly paid the filing fee required by law, with copy of the receipt of the County Treasurer of Red Willow County, Nebraska, for the filing fee for said office.

Plaintiff's Exhibit 5

Exhibit 5 is a duly authenticated copy of the application of George W. Norris of Broken Bow, Nebraska, requesting that his name be

placed upon the official primary ballot of the Republican party for the primary election to be held on August 12, 1930, as a candidate for Senator of the United States for Nebraska, filed with the Secretary of State of the State of Nebraska, on July 5, 1930, accompanied by a receipt showing that the said George W. Norris had duly paid the filing fee required by law, with copy of the receipt of the County Treasurer of Custer County, Nebraska, for the filing fee for said office.

Plaintiff's Exhibit 6

Exhibit 6 is a duly authenticated copy of petitions filed by thousands of voters of the State of Nebraska requesting that the name of W. M. Stebbins be placed upon the official primary ballot for the primary election to be held on August 12, 1930, as a candidate for the republican nomination for United States Senator for Nebraska, together with the receipt of the County Treasurer of Dawson County, Nebraska, for the filing fee for said office.

Plaintiff's Exhibit 7

Exhibit 7 is a duly authenticated copy of a paper called an application for nomination signed by W. M. Stebbins, and filed with the Secretary of State of the State of Nebraska, on November 12, 1929, accepting the nominating petitions shown by Exhibit Number 6, filed for the purpose of placing his name upon the official ballot of the Republican party for the Primary Election to be held on the 12th day of August 1930, in Nebraska, as a candidate for the office of United States Senator.

30 JOHN ANDREWS, called as a witness by plaintiff, testified as follows:

Direct examination by Mr. NYE:

Witness states that he has resided at St. Paul, Minnesota, since 1924; that he was at Washington, D. C., from April 1930 to April 1932; employed as Secretary to the Senate Committee on Campaign Expenditures and that he was appointed to that position in April 1930 by the committee. He accepted the appointment and was employed about two years. He produced Exhibit 8, which is the Minutes of a meeting of the Committee, which was known as the Select Committee on Senatorial Campaign Expenditures. It was his duty to handle all correspondence, arrange transportation, look after the details of the Committee, and keep a record of the meetings when so ordered.

Exhibit 8, being Exhibits 8-A, B, C, and D were identified by the witness and offered and received in evidence. These exhibits are Minutes kept by the Secretary, as Secretary to the Committee. Exhibit 8-A recites the minutes of a Meeting held in Washington, D. C., on May 18, 1930, and is in part as follows:

Exhibit 8–A

"A discussion of future procedure was had. The Chairman was unanimously authorized to act as a sub-committee and to appoint a sub-committee of one or more members to hold hearings as in his judgment was desirable."

Exhibit 8–B recites the minutes of a meeting held at Broken Bow, Nebraska, on July 19, 1930, and lists the names of the witnesses who gave evidence on that day, and is in part as follows:

Exhibit 8–B

"The Committee met, pursuant to the call of the Chairman (Mr. Nye), at 10:00 a. m. in the City Hall, Broken Bow, Nebraska. Senators Present: Nye, Chairman. * * * At 5:30 P. M. the Committee adjourned to meet subject to the call of the Chairman."

Exhibit 8–C recites the minutes of a meeting held by the Committee on July 21, 1930, at 10 A. M. in the Federal Building of Lincoln, Nebraska, and is in part as follows:

Exhibit 8–C

"The Committee met, pursuant to the call of the Chairman (Mr. Nye), at 10:00 a. m. in the Federal Building, Lincoln, Nebraska. Senators Present: Nye, Chairman. * * * At 5:10 p. m. the Committee adjourned to meet subject to the call of the Chairman."

Exhibit 8–D

Exhibit 8–D recites the minutes of a meeting of the Committee held on September 22, 1930, at 9:30 A. M. in the Federal Building in Lincoln, Nebraska. It further recites that at 12:15 P. M. the Committee adjourned to meet subject to the call of the Chairman.

Witness was present in Lincoln on September 22, 1930, at the meeting of the Committee. On that day public hearings were held in this Court room in the Federal Building in Lincoln. The meeting held on September 22 lasted throughout the day and then recessed until the next day until the hearings were completed. Public hearings were held on the 23rd and the 24th, at which the witness was present. The witness saw the defendant, George W. Norris, on either September 23 or 24, one of the days of the public hearings. The witness was in and out of the room but was not present when the defendant was called to the witness stand. The witness kept no other minutes of the meetings except as shown by Exhibits 8–A to D because this Committee had made the rule that when the shorthand reporter took over the meetings, he made all notices and notes of recesses, adjournments, etc. This shorthand reporter was William M. Day.

Cross-examination by WM. E. SHUMAN:

The minutes were kept either by the witness or court reporter. The Committee was in session in Lincoln on September 22, 23, and 24. It was a sub-committee appointed by a whole committee. The defendant testified one day and then again on the next day. The members of the Sub-committee who conducted this hearing were Senators Gerald P. Nye and Dale. The Committee held hearings, examined witnesses, and issued subpœnas.

"Q. So far as you know the committee just took the testimony of witnesses and it issued subpœnas to compel the attendance of such witnesses?

"A. That is correct."

The Committee was engaged in taking testimony in this court room practically the whole of the days of September 22, 23, and 24. The minutes produced, Exhibits 8-A to D are the only minutes made by the witness for these three days.

32 WILLIAM M. DAY, called as a witness by plaintiff, testified as follows:

Direct examination by Mr NYE:

Witness has resided at Washington, D. C. since 1910; is now employed as manager of the office of the official stenographers to Committees of the House of Representatives; his profession is shorthand reporting. In 1930 witness was engaged in reporting the hearings of the Senatorial Campaign Investigating Committee, which is the same committee that the witness John Andrews was telling about. Witness came to Lincoln and was here on September 22, 23, and 24, 1930. There were hearings before the committee on those days in this court room. Witness took the testimony of witnesses at the hearing in shorthand and transcribed same to longhand and has checked the printed form of the testimony with his shorthand notes. The printed form truly and correctly reflects the notes taken at this hearing. The notes also show the hours the committee met.

The witness first saw the defendant George W. Norris on September 22, 1930 in this court room. He was called as a witness before this committee. The members of the committee that were present were Senators Gerald P. Nye and Porter H. Dale. The defendant was called and sworn as a witness. He was asked his full name and answered George W. Norris. He gave his residence at that time as Enid, Oklahoma; said he took employment there about thirty days ago; was last employed before going to Enid at Broken Bow and that this employment at Broken Bow ended at the time of his filing; that he resigned from his position as manager of the grocery store at the time of his filing.

The witness testified that the defendant Norris testified that he first gave consideration to becoming a candidate for office about the

middle of May, he guessed; that he consulted with no one in May relative to becoming a candiate and that his consideration of being a candidate was on his own volition; that he was then considering becoming a candidate for railway commissioner and paid his filing fee but did not file for the office. Norris testified he did not file for railway commissioner because he thought about filing for United States Senator. He went to the office of attorney A. Paul Johnson, had the application paper prepared as a candidate for United States Senator, went to the court house and paid his filing fee, and then sent the application to Lincoln by registered mail.

33 At 12:00 o'clock noon the Committee recessed until 2:00 P. M. and resumed the hearing at that hour. The following are questions and answers, which are part of the examination of the defendant Norris:

"Q. Now what assurance did you have of financial support and backing?

"A. None whatever.

"Q. In your campaign?

"A. None whatever.

* * * * * * *

"Q. Did you get any assurance from anybody that they would help you—Republican, Democrat, independents, or anybody say they would help to finance your campaign?

"A. No, sir.

* * * * * * *

"Q. Did you receive any money from anybody in the campaign?

"A. I did not."

The notes kept by the witness show the sub-committee met pursuant to call at 10:00 A. M. in the Federal Building, Lincoln, Nebraska, on September 22, 1930. The questions and answers that have been copied above were all answered on that same day before the sub-committee. The questions were asked by members of the sub-committee and were answered by the defendant Norris.

Cross-examined by Mr. SHUMAN:

This was a meeting of the sub-committee, the Committee itself not being present. The session began in this room on the morning of September 22, 1930. The Committee remained in session all that day outside of a recess at the noon hour. The evidence which was given by Mr. Norris was given on September 22. Witness was present at all of the hearings and reported all of them. When the sub-committee finished taking testimony on the evening of September 22 they adjourned at 4:40 P. M. until 10:00 A. M. of September 23, 1930.

The evidence which the witness gave as to the testimony of the defendant Norris was only a portion of the evidence of the defendant and many other questions were asked of him and answered by him.

The defendant Norris was recalled to the witness stand the next day, September 23, 1930.

34 The defendant Norris was a witness before this Senate Committee on September 22, 1930, and again on the next day. He was questioned by Senator Nye on this second day.

A. PAUL JOHNSON, called as a witness by plaintiff, testified as follows:

Direct examination by Mr. NYE:

The witness stated that his name was A. Paul Johnson; that he resided at Broken Bow, Nebraska, where he had lived all his life of 37 years; that this occupation was lawyer, which was his profession in 1930. Witness said he first became acquainted with Mr. Victor Seymour of Lincoln, Nebraska, on Sunday, June 29 in Kearney, Nebraska, at the Ft. Kearney Hotel; that he was acquainted with Mr. Hugh Drake, formerly of Kearney, now a member of the railway commission; and with his brother Oscar Drake, also an attorney, of Kearney, Nebraska, and was acquainted too, with George W. Norris of Broken Bow, during the year 1930, who was manager of the Safeway Store at Broken Bow and had been for quite a while.

When the witness met Seymour in the Ft. Kearney Hotel, Hugh Drake and Oscar Drake were present, in a room of the hotel. Oscar Drake called him there by phone and the four of them conversed in that room. No one else was present.

The first meeting of the four of them in the room of the hotel was in the morning and they later met in the same room late in the afternoon. Mr. Seymour gave the witness $50.00 in currency and told him what to do with it.

The next day the witness returned to Broken Bow and saw the defendant Norris in his office, had a talk with him there in regard to the transactions that were had at Kearney with Victor Seymour and Oscar Drake and Hugh Drake.

On June 26, 1930, the defendant Norris came to the office of the witness with a blank application to have filled out as a candidate for Railway Commissioner and it was prepared in the office of the witness and was filed by the defendant and acknowledged by the witness as a notary public. It was then delivered to Mr. Norris. Mr. Norris returned to the office of the witness sometime on June 29, 1930. On Monday, June 30, 1930, the defendant was at the office of the witness and they had a conversation together, no one else being present. At that time the witness told defendant about the

35 conversation on the day prior with Seymour and the two Drakes in the Ft. Kearney Hotel. The witness told Mr. Norris that Mr. Seymour had requested the witness to tell him of his offer and request (Norris) not to file as a candidate for Railway Commissioner, but to file for the United States Senate; that Sey-

mour had given the witness $50.00 in currency to pay his filing fee if Norris should decide to accept Mr. Seymour's offer, and that Mr. Seymour stated if he would file the Republican party would support him; that this $50.00 would be given to him if he would accept the offer and file as a candidate for the United States Senate. The witness also said that he told Mr. Norris that Mr. Seymour stated he was prominent in the Republican party nationally. Nothing was done with this $50.00 on June 30, 1930, but on July 2, 1930, witness stated that he delivered the identical $50.00 to Norris. Witness also told the defendant that Mr. Seymour said that the Republican party would be behind him; that his campaign expenses would be paid estimated at $500.00; that he would be taken care of, and if he did not withdraw within the period that the law required, he would be delivered another $500.00.

Subsequent to June 30 the witness said he has received a $500.00 bond and on July 3 he delivered this bond to Mr. Norris at his residence in Broken Bow; that he had a conversation on that same day at the landing field about two miles east of Broken Bow, with Mr. Norris. Norris said he wanted this bond and that he had filed or was going to file. The witness said he told him the bond was in the bank and he would have to get it and that the witness would bring it to Norris at his home. Witness said he got the bond and delivered it to Mr. Norris at his residence.

Cross-examination by Mr. SHUMAN:

Witness has been practicing law for 14 years. Norris told the witness that his employers "had told him if he was going to file as a candidate for the United States Senate they didn't want him around the store; it would cause too much confusion; he was going on his vacation and he wanted $500.00 bond."

At the time the witness delivered the bond he also gave Norris $50.00 in money. Prior to that witness had given to Norris the $50.00 which witness had received from Seymour, the second $50.00 belonging to the witness.

The witness said he got the $500.00 bond in the mail on the morning of July 2, 1930, in a registered envelope and then he put it
36 in the bank. He came to the room in the Ft. Kearney Hotel the last Sunday of June to attend the conference, upon a telephone call from Oscar Drake. The candidacy of Mr. Norris was discussed at that meeting. The witness had a part in that discussion. The same persons were present both in the morning and afternoon conference that Sunday in the Kearney Hotel, they being Oscar Drake, Hugh Drake, Victor Seymour, and the witness. At this conference Mr. Seymour

"stated if Mr. Norris would file as a candidate for the United States Senate that his filing fees in the sum of $50.00 would be paid; that he would receive the support of the Republican Party; that his campaign expenses would be paid and it was estimated at $500.00; that he would be taken care of, and if he did not—that if he would file

and did not withdraw before the time limit for filing withdrawals that he would receive another $500.00.

"Q. That is, he was to receive a total of $1,000.00 if he filed and stayed on the ballot without withdrawing?

"A. Yes, sir."

The witness said also that he believed Mr. Seymour made a statement at that conference in regard to keeping his name out of it and seeing that it was not disclosed in the transaction. Seymour said he had a prominent place in the Republican party and did not want to be mixed up—did not want his name to be disclosed and that the witness was not to disclose his name at all in connection with these negotiations; that the witness told Seymour his name would not be disclosed to others but he did not believe it; he said it wouldn't be disclosed to Norris.

Witness also said that he might have told Norris that the man who gave the money to him was a man prominent in the Republican party of the state but that he could not disclose the name; that he couldn't say whether or not he did disclose the name to Norris and did not know whether he told him where this man lived.

The witness said he had never met Victor Seymour before that Sunday and that Seymour did make a statement that under no circumstances was his name to be disclosed as the one who gave the $50.00, or to anyone in connection with the transaction; that he did not want his name disclosed at all because of his connection with the Republican party.

"Q. And you did not disclose his name to Mr. Norris at any time, did you?

"A. I can't recall, I can't say.

37 "Q. What is your best recollection?

"A. It would be just a guess, Mr. Shuman.

"Q. And of course you don't want to guess on the subject, but you would not say you did not disclose his name to the defendant, George W. Norris, at all?

"A. I can't say—too long ago for me.

"Q. The lapse of five years makes these things somewhat dim in one's memory, does it not, at least in your memory on this occasion?

"A. Yes; I can't say for certain."

At this point adjournment was taken by the court until 9:30 A. M. of the next day, Wednesday, December 11, 1935.

When this Senate Committee first came to Nebraska it came to Broken Bow and held a session on July 19, 1930, in the Town Hall and the witness was a witness before the Senate Committee at that time. On this occasion Senator Nye asked the witness the questions and the witness answered as quoted below:

"Q. Did you have any conference with other than George W. Norris before he left for his vacation?

"A. No, sir.

"Q. On the point of his candidacy?

"A. No, sir.

"Q. Did you listen in on any conference in which this candidacy was being discussed?

"A. No, sir."

The witness said his statements and the answers "strictly speaking, they were not true." That it was a misleading statement and untrue. That the testimony given here yesterday afternoon (referring to testimony of witness on direct examination is an exact statement of the facts. Also on this same occasion Senator Nye asked this witness the questions and he gave his answers as follows:

"Q. Did you ever pay George W. Norris anything?

"A. I certainly did not.

"Q. Did you ever see George W. Norris paid anything?

"A. I did not.

"Q. Have you any knowledge at all that George W. Norris received any award or contribution at the time he announced himself a candidate for United States Senator?

"A. If he has received anything it is absolutely beyond my knowledge and I don't believe he has received anything."

The witness also came to Lincoln and appeared again as a witness before the Senate Committee September 22, 1930. He said he was sworn as a witness of Broken Bow but did not recall whether he was sworn after that or not, and he understood he was to answer truthfully.

38 At the hearing in September Senator Nye asked and he answered a question as follows:

"Q. Did you know of any connection that Mr. Seymour had with the Primary campaign at that time?

"A. I do not; I did not, and I do not know."

Either the night or the day before the $500.00 bond was received Seymour telephoned the witness. At the conference in the Kearney hotel, the witness told them that he would take the proposition to Norris. Mr. Seymour asked the witnesses to tell Mr. Norris that if he (Norris) would not file for railway commissioner that his filing fees in the sum of $50.00, and his campaign expenses estimated at $500.00 would be paid; that he would receive the support of the Republican Party and that he would be taken care of, and if he did not withdraw within the time limit for filing withdrawals he would receive another $500.00. The next day the witness reported this to defendant Norris. It was witness' recollection that the bond received was a $500.00 Liberty bond, but he said he could not tell for sure.

Redirect examination by Mr. NYE:

Witness was present when the defendant Norris testified before the Senate Committee on September 22, 1930, and heard his testimony. After that the witness appeared before the Committee and the defendant Norris was present when the witness went back on the stand but in what part of the room he did not recall.

FRANK HEALY, called as a witness by plaintiff, testified as follows:

Direct examination by Mr. NYE:

The witness said he resides at Washington, D. C.; has lived there off and on for 20 years; his residence was in Virginia where he resided in 1930; is a lawyer.

Witness said he met the defendant Norris when he first appeared before the Senate Committee in this court room. He could not tell the month but it was in the year 1930. Norris testified on two days before the committee. Witness was a special assistant for the Nye Committee and in particular charge of the Senatorial Campaign in the Nebraska investigation.

Witness saw Norris in Alva, Oklahoma, in June, 1931, in the
39 Safeway Grocery Store. Norris was attending to his store and customers all the time the witness was there and witness conversed with him but stopped when the customers came in. Conversation was at several places in the store. Norris said the $50.00 filing fee and the $500.00 bond were the only amounts he had received on account of the Senatorial campaign. He did not say from whom he received them. He did state he had received them.

Cross-examination by Mr. SHUMAN:

Witness said he was admitted as a lawyer in 1916 and his work with the Committee was gathering evidence in regard to matters this Nye Committee wanted to inquire about.

Witness said that he went to Oklahoma at the direction of Senator Nye at the expense of the Committee, and called upon Norris at the store in which he was working in Alva, Oklahoma. Conversation with Norris was interrupted, as he had to take care of his customers; that he was instructed by Senator Nye and planned to report the information he got there to Senator Nye and did report same to him. Witness was in constant touch with Senator Nye and he gave directions as to what the witness would do throughout this matter. The witness said he was in the store where Mr. Norris worked at least an hour, possibly two, was very much interrupted in talking to him, conversation was broken into a great many times.

VICTOR SEYMOUR, called as a witness by plaintiff, testified as follows:

Direct examination by Mr. NYE:

The witness said he resided in Lincoln in 1930.

Cross-examination by Mr. SHUMAN:

Witness stated that he made a trip to Kearney one Saturday afternoon with Railway Commissioner Hugh Drake in June or July 1930. Was in a meeting with Hugh Drake, Oscar Drake, and A. Paul Johnson at the Ft. Kearney Hotel. The witness said he did

not know whether you would call it one meeting or two, they were in and out at various times during the day and he did not recall whether at any time after the Drake boys came into his room whether he was alone or not. The Sunday in question was the last Sunday before the 4th of July. The witness said he was an attorney but not in practice; was admitted about 43 years ago.

40 The witness said he was called as a witness before this Senatorial Investigating Committee on July 21, 1931; was sworn as a witness; was asked questions by Senator Nye and answered them thus:

"Q. Mr. Seymour, have you had any contact with the pending senatorial campaign in Nebraska?

"A. None whatever. No personal contact—no connection."

The plaintiff, having rested, the defendant moved the court "to direct a verdict for the defendant for the reason that the evidence is insufficient to sustain a conviction if a verdict of guilty should be returned by the jury and that under the evidence there is no issue to submit to the jury." . . .

The court overruled the motion, to which the defendant duly excepted. The defendant offered in evidence Exhibit 13 and same was received in evidence.

Exhibit 13

Exhibit 13 was a judgment of the Supreme Court of Nebraska being set forth in an opinion by Chief Justice Goss dated July 18, 1930, in the case of State of Nebraska ex rel Robert Smith, Relator vs. Frank Marsh, Secretary of State of Nebraska, Respondent. The opinion recites that the cause was heard upon the objection of the relator to the filing of the certificate of nomination, or nomination affidavit filing in the office of the Secretary of State by George W. Norris of Broken Bow, Nebraska, for the office of United States Senator of Nebraska, for the primary election to be held on August 12, 1930.

The findings and judgment of the court are stated in the following language:

"I find that the said certification of nomination or nomination affidavit of George W. Norris of Broken Bow was not filed in the office of the respondent within the time required by law, and find that the Secretary of State is not warranted in certifying the name of said George W. Norris of Broken Bow to the several county clerks and election commissioners in the state as a candidate for the office of United States Senator of Nebraska.

"It is, therefore, ordered that said respondent is hereby directed to omit from the list of candidates for United States Senator of Nebraska, certified by him to the various county clerks and election commissioners, the name of George W. Norris, whose post office address is shown as Broken Bow, Nebraska, and who has been spoken

of in this hearing as George W. Norris, Number Two. It is
41 further ordered that if said list of candidates shall have been sent out, said respondent shall forthwith instruct the various county clerks and election commissioners to omit that name from their publications and from their ballots."

WILLIAM M. DAY, called as a witness by defendant, testified as follows:

Direct examination by Mr. SHUMAN:

The witness said he was the same William M. Day who had testified before. Upon objection to a question by defendant, the witness was cross-examined by Mr. Votava and said that the defendant Norris first testified on September 22, 1930, and was represented by counsel, Mr. Shuman, and that the record shows that Mr. Shuman made this statement after the witness was sworn:

"Mr. Norris, the witness now called, has asked me to represent him as far as may be necessary before the committee.

"The CHAIRMAN. Very well.

"Senator DALE. You mean by that that Mr. Norris will not respond to questioning himself?

"Mr. SHUMAN. No; I don't mean that at all, but I mean to say that if I feel the committee went beyond bounds I would want opportunity to object.

"The CHAIRMAN. Very well."

The witness said he saw Mr. Shuman present during the taking of Mr. Norris' testimony. Judging from the record, Mr. Norris must have concluded his testimony about four o'clock in the afternoon and the committee resumed its hearing on the next day. Seven witnesses appeared before Mr. Norris gave further testimony on the second day, including A. Paul Johnson, who testified immediately before Mr. Norris took the stand on September 23.

Mr. Norris was present at least a part of the time Mr. Johnson was giving testimony. When the defendant Norris came into the Court room where A. Paul Johnson was testifying, Senator Nye asked Norris to come and sit right next to Johnson to hear Johnson's testimony. After Mr. Johnson testified, then the defendant took the stand.

Redirect examination by Mr. SHUMAN:

The only recollection the witness had that the defendant was present when A. Paul Johnson was testifying was the record he made wherein Senator Nye called for the defendant Norris and a
42 note of the witness read "George W. Norris of Broken Bow, Nebraska, here entered the hearing room. The chairman said, 'Mr. Norris, won't you come down and have a chair near Mr. Johnson, because I want you to hear what he is saying.'" The witness stated he had examined the record as to the evidence taken at the hearing and from the record his memory was refreshed and that his

records indicated that Senator Dale "Interrupted and stopped the defendant from answering any of the questions at that place indicated in the record."

After the last question had been answered by the witness when he was last on the witness stand, Senator Nye said, "and the Chair is prepared to announce it does not care to hear any more testimony from Mr. Norris." This statement by Senator Nye was offered in evidence by defendant.

"Mr. VOTOVA. The government objects to the offer of same as incompetent and immaterial, not tending to prove or proving any defense to the charges in the indictment, asking for a conclusion, and in support of the objection we refer to the record made to the first offer of Exhibit 10 as contained on pages 304 and 305.

"The COURT. I will reserve ruling on that."

Later defendant reoffered this same evidence, to which plaintiff objected as follows:

"Mr. VOTOVA. Objected to as incompetent and immaterial, not tending to disprove any of the charges in the indictment and hearsay and self-serving.

"The COURT. I think it is immaterial.

"To which ruling of the court the defendant then and there duly excepted.

"Mr. SHUMAN. We offer to prove by the witness on the stand that the Senator Nye presiding as Chairman on this occasion at the time stated made the statement, 'And the Chair is prepared to announce that it does not care to hear any more testimony from Mr. Norris.'

"Mr. VOTOVA. We object to the offer for the same reason.

"The COURT. Sustained.

"To which ruling of the court the defendant then and there duly excepted."

43 GEORGE W. NORRIS, Defendant, called as a witness in his own behalf, testified as follows:

Direct examination by Mr. SHUMAN:

Witness said his name was George W. Norris; age 36; married; lives at Alva, Oklahoma; is in the grocery business; lived in Nebraska 17 to 20 years; at Kearney, Nebraska, 12 or 13 years; when living at Kearney became acquainted with Oscar Drake and Hugh Drake. Shortly after the first of the year 1929 moved to Broken Bow where was manager of Safeway Store. Made Broken Bow his home until the last of July 1930.

The latter part of June witness went to the County Treasurer's office and paid the filing fee for Railway Commissioner of the State of Nebraska; made this filing on his own volition and choice and sent the application and receipt for filing fee on about June 25, 1930, to Mr. Beynon at Lincoln, with whom he had become acquainted as a boy in Kearney.

About the 2nd day after that Oscar Drake came to see him at the store at Broken Bow where defendant was employed. Oscar Drake

was an attorney of Kearney and a brother of Hugh Drake, who was running for Railway Commissioner. After the witness talked with Oscar Drake, he went to the office of A. Paul Johnson, attorney, and made out and signed an application as candidate for United States Senator. Witness did not know that the meeting of Victor Seymour, A. Paul Johnson, and Oscar and Hugh Drake was to be held in Kearney. He did not know Mr. Seymour and had never heard of him.

About the 2nd day after Oscar Drake called upon him, witness received a phone call asking him to come to Kearney to see him, but he did not go. He ran into A. Paul Johnson on the street, who said he was going to a dance and he asked him to see what Oscar Drake wanted. On the last Monday in June 1930 witness talked to A. Paul Johnson in his office and Johnson said they had a meeting "and the representatives of the Republican Party from Lincoln was at the meeting and that they would guarantee me all the support of the Republican Party and would pay my filing fees and $500.00, I believe that is it.

* * * * * * *

"I believe he said he was Central Committeeman or something of that kind. I wouldn't state—head of the Republican Party."

44 Johnson said that this representative Republican said that witness would have plenty of contributions and would start off with $500.00. The witness said he did not reach any decision when Johnson talked to him that day but he gave consideration to the subject and thought it over, and saw Johnson a day or two later and signed an application in Johnson's office as candidate for United States Senator on July 2, 1930. He said Johnson did not tell him the name of the Committeeman of the Republican party and did not mention the name of Victor Seymour at all. He said the first he heard there was such a man as Victor Seymour was when he got back from his vacation.

Witness said he decided he could not get any support for Railway Commissioner; Mr. Drake had told him he would get all of the support if he filed for the United States Senator and so decided to run for the Senate. He said he made the filing for that office in good faith and felt that with the promise of support he had a chance to win the nomination for that office.

Mr. Johnson gave him the $50.00 filing fee the same day he filed and he called upon the County Treasurer and paid it to him. The next day, July 3, Mr. Johnson gave him a $500.00 bond.

The witness said he took up the matter of being a candidate with the manager of the store in which he was employed and he resigned his position in the store and went away on a vacation, leaving on the evening of July 3. When Mr. Johnson gave him the $500.00 bond the witness also obtained from him $50.00 in money. He told Johnson that he did not have enough money to go on his vacation, didn't have his commission check yet but would like to have some money

because he wasn't sure he could get cash on the bond as the banks were closed and Johnson gave him $50.00. It was a loan which he repaid when he got his commission check. This was another $50.00 other than the filing fee which Johnson gave him.

Late that afternoon the witness left by automobile for his vacation, stopped at North Platte, saw his brother Carl, gave him the $500.00 bond and told him to wire the money to him at Estes Park, where he was going on his vacation.

The brother wired the money to him by Western Union to Estes Park where he got the money and where he spent about a week on a vacation.

45 Witness said he had never been a candidate for any office before and had not taken an active interest in political matters.

The witness said that A. Paul Johnson did not tell him he would give him another $500.00 if he would not withdraw as a candidate for United States Senator. The witness said that he was a witness before the Senate Committee on September 22, 1930, and was summoned by the United States Marshal from Omaha; that he knew of the decision which was rendered on July 18, 1930, in which the Supreme Court of Nebraska ruled that his filing was too late and that a judgment was entered that the Secretary of State should not put his name on the ballot and that he knew this before he was called as a witness—that he had not read the Senate Resolution under which they claimed to act and that he had never been called before a Senate or Legislative Committee at any time.

The witness said that when he was on the witness stand before the Senate Committee he denied he had received any contributions for any campaign and denied that he got $50.00 of any money from anybody to file and that these answers were not true.

On the next day the witness consulted with an attorney, Mr. Shuman, before he went back to the witness stand and was advised as to whether or not he could correct his testimony. After he asked this advice from the attorney he returned to the witness stand. The witness was not in attendance all the time that everybody was testifying but was in the building; in the corridor part of the time. Following the testimony of Esther Alton (Mrs. Peterson), the witness had asked the advice of Mr. Shuman.

Upon returning to the witness stand the witness was asked again about the $50.00 and told the Committee that he had received it; that he had received $50.00 from A. Paul Johnson to pay his filing fee for the United States Senator and that he also received another $50.00 from him; also that he had received a $500.00 bond from A. Paul Johnson. Witness said he also told Senator Nye that he had received a $500.00 bond. After the witness had gone on the stand for the second time and had answered quite a number of questions, Senator Nye made the statement that he did not care to hear any further testimony from the witness. The witness was asked if he did not ask if he could see a copy of his former testimony in order

46 that he might make additional corrections; an objection to the question was sustained. The witness was also asked whether or not Senator Nye said to him that he did not care to hear any further testimony from him, to which objection was made and sustained, and to all of which defendant excepted.

"Q. After you had taken counsel with me and I had advised you in regard to the subject of whether you could go back and correct your testimony, I will ask you to state whether or not you were ready and willing to answer any question that they might ask you correctly and fully when you returned to the witness stand?

"Mr. VOTOVA. Objected to as incompetent and immaterial.

"The COURT. Sustained.

"To which ruling of the court the defendant then and there duly excepted.

"Mr. SHUMAN. Also offer to prove by the witness on the stand that after he had taken counsel with attorney who is making this examination, William E. Shuman, and had returned to the witness stand that he was ready and willing to correct any and all errors or omissions in his testimony and to furnish detailed and accurate information in regard to any of the subjects that he had been asked about before.

"Mr. VOTOVA. We object to the offer for the reason it is incompetent and immaterial.

"The COURT. I will reserve ruling on that.

"Mr. SHUMAN. Did your Honor have some other rulings in reserve?

* * * * * * *

"The COURT. Yes, there was one that is not covered. You offered to show that the defendant was ready and willing to make any and all changes in his testimony. I will sustain the objection as to that.

"To which ruling of the court the defendant then and there duly excepted."

Cross-examination by Mr. VOTAVA:

Witness said he was manager of the Skaggs Store at Broken Bow in 1930; had been a little over a year; prior to that time was a clerk in a store at Kearney about a year; had a high school education but no education beyond that; went to the Army after high school.

When sworn on September 22, 1930, he stated he was going to 47 tell the truth and the whole truth and did testify that he had not received any money from anyone and had not received any assurance of financial support. Knew at the time of testifying he had received $500.00 and the $50.00 and what he was saying was not true.

Witness said when he came to testify in September he asked Mr. Shuman to appear as his attorney. After witness finished his testimony on the first day and before he testified on the second day, he remained in the room or the corridors, knew what witnesses were being examined, heard most of the testimony. Saw Mr. Johnson on the witness stand and heard what he testified to.

WILLIAM M. DAY, recalled as a witness for defendant, testified on September 23, 1930, the defendant George W. Norris in this court room was asked and answered questions as follows:

"Q. Now, Mr. Norris, do you want the story that you have told us of your entire connection with this campaign to stand as your story?

"A. Outside of I might make a few changes in it, the same as Mr. Johnson has. He did give me $50, and on going back to Missouri I mailed back to him the $50. I got a bank draft and mailed it back to him after I got my commission check.

"Q. Mailed it back to whom?

"A. Mr. Johnson.

"Q. You thought, then, Mr. Johnson was paying this $50?

"A. I borrowed it.

"Q. You borrowed it? Didn't you hear his testimony that someone had given him that money to give you?

"A. No; besides that.

"Q. You had borrowed something in addition to that filing fee, $50? A. Yes, sir.

"Q. From Mr. Johnson? A. Yes, sir.

"Q. You sent that back to him?

"A. You will find the transaction there.

"Q. But you never made any reimbursement of the $50 you got for the filing fee?

"A. No, sir; I never paid him that back.

"A. Now, what other changes would you want to make in the story you have told us?

"A. I believe that is all. I would like to go on tomorrow and make some changes.

"Q. Let us make whatever changes are needed there, and if you have made any untruthful statements today surely you know what they are and can correct them now.

48 "A. You mean yesterday?

"Q. Yesterday.

"A. Do you have a copy of that there?

"Q. No; we don't have a copy of that.

"A. That is all that I know, outside of—

"Q. That is all that you know? Now, what of this $500 that was given you?

"A. That was given to me by Mr. Johnson and cashed at North Platte with my brother."

Thereupon both plaintiff and defendant rested.

Thereupon defendant made the following motion:

Motion of defendant for directed verdict and overruling thereof

"Defendant moves the court to direct a verdict for the defendant for the reason there is not sufficient evidence to submit the cause to the jury for their verdict."

The court, ruling on the motion, said:

"Well, I am rather under the impression that there is enough here to go to the jury, on a portion of the indictment."

To which ruling of the court the defendant then and there duly excepted.

Court's instructions to the jury

Munger, D. J.

The COURT. Gentlemen of the Jury, I have sustained a motion of the defendant to exclude from your consideration all the testimany relating to the charge in the indictment which, in substance, was that the defendant had testified fasely that he had written a campaign statement which was published in the Custer County Chief and that no one helped him prepare the statement, and that that statement was mailed by the defendant to A. Paul Johnson at Broken Bow. Because of my sustaining that motion you should entirely disregard that part of the charge and the testimony relating to that statement, its preparation and mailing. I have overruled the motion for a directed verdict so that the case is now ready for argument to the jury.

(Closing arguments to the Jury by counsel for the plaintiff and defendant.)

49 Instructions to the Jury

GENTLEMEN OF THE JURY: This prosecution is brought under a statute of the United States, the essential portions of which read as follows:

"Who ever having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify truly, shall wilfully and contrary to such oath state any material matter which he does not believe to be true, is guilty of perjury and shall be fined not more than two thousand dollars and imprisoned not more than five years."

In view of what has been said in the argument as to the punishment for perjury, it is proper to say to you that that is purely a matter for the court as to what sentence shall be imposed if a verdict of guilty is returned. As the statute says the punishment could be anything in the way of a fine from one penny up to two thousand dollars and the imprisonment could be anything from being placed in the custody of the marshal for a few minutes or being sentenced to a jail for any period of time not exceeding a year or imprisonment in a penitentiary not exceeding two years, there would have to be both a fine and an imprisonment, but the amount of the fine or imprisonment and the place of the imprisonment would be entirely for the court.

It is alleged in the indictment in this case when and where and under what circumstances Mr. Norris testified and this time and place was an occasion in which a law of the United States authorized an oath to be administered if it appears that the United States Senate adopted a Resolution which was offered in evidence, dated in April 1930, providing for an official committee of investigation and, if pursuant to that Resolution the Vice President appointed Senators Nye, Dale, Dill, Patterson, and Wagner as members of such committee, and if in May 1930 at a meeting of the committee at which four of these Senator members were present, as alleged in the indictment, the committee authorized the chairman of the committee to act as a subcommittee, and if Senator Nye, as such chairman, held a public hearing and investigation either by himself or with some other member of the committee pursuant to the Senate Resolution, at Lincoln, Nebraska, and called the defendant as a witness in that investigation, and Chairman Nye then administered an oath to the defendant and the defendant took an oath to testify truly.

This statute says that, "If any person under the circumstances named shall wilfully and contrary to such oath state any material matter which he does not believe to be true, he shall be guilty of a perjury." What is meant by the word "wilfully" as used in this statute? The meaning is, that the person must intentionally state something that is false and which he does not believe to be true. Even though the defendant testified falsely, that is not sufficient to convict him, nor would it be sufficient that he testified falsely but did so carelessly, or negligently, or hastily, but it must appear that he testified falsely and so testified intentionally and that he did not believe this testimony was true when he gave it. Where the statute refers to a statement that is contrary to such oath, it means that the statement must be false, that is, not true. The statute says that the testimony must be as to a material matter, the statement of an opinion would not be a material matter, but it must be a statement of a fact and a fact so related to the subject of the inquiry that it is material to that inquiry and it must be in one or more of the matters charged as false in the indictment. You, of course, realize that there are many ways in which statements under oath may be given. In some instances, it may be very clear as to what the witness means and as to whether he believed or did not believe what he said was true. As an illustration: One may sign an affidavit which he may write himself or which may have been written by some one else but which he has read or has heard read to him and has carefully considered before signing and swearing to it. Then there are other cases where there is not so much time for study and deliberation. Testimony may be given in court or testimony may be given elsewhere by question and answer, and in some instances may come very slowly and deliberately so that there is time to understand the questions and to frame the answers. At other times there may be an impetuous haste so that the time for deliberation is not great. Then there may be instances

where the questions will be very plain, easily understood, simple in language, definite in meaning, and the answers may be very simple, the meaning of which is unmistakable. Then there may be instances where the questions are involved or long or where unusual words are used, where the relationship of phrase to phrase and clause to clause will be such that there may be difficulty in gathering the exact scope and meaning of the question. And in all cases the answer has
51 to be considered under the circumstances in which it is given.

So also an answer itself may be involved and difficult to put in words or hard to express. And we are not all alike. Some may have the gift of expression and clarity; others may have difficulty in expressing themselves on any occasion and might have more difficulty when under oath and trying to be exact. I am stating this in calling your attention to the statute which says you are to consider in effect whether the testimony as given was believed to be true because the belief must be considered in view of the circumstances under which the person made the statement. Of course, it is proper to consider the intelligence, the experience, the education, the understanding of the person who gives the testimony, and his comprehension of the questions asked him and his knowledge of the meaning of the word which he uses in giving his answers. But after considering all of these circumstances, the final and legal test is not what his words might ordinarily mean, not what some one else claims they mean, not what the jury thinks the words mean, and not even the meaning which the words have as defined in the dictionary, although the ordinary meaning of such words is proper for you to consider in ascertaining the meaning which was used by the one giving the testimony. The test that you must consider and use is whether or not the defendant believed the testimony as given was true at the time and in the sense that he understood the questions and in the sense that he gave the answers constituting his testimony.

In a criminal case the guilt of the defendant must be proved beyond a reasonable doubt. I will refer more to this rule later, but I state it now just briefly in order to call your attention to another rule of law that applies in a prosecution of this kind.

Before a verdict finding one guilty of perjury can be rendered there must be proof by the testimony of two or more witnesses or proof by the direct testimony of one witness corroborated by other facts appearing in the case, showing that the alleged testimony of the defendant was false in a material matter as charged in the indictment. If it is alleged in an indictment for perjury that one has made a false statement and at the trial only one witness testified that the statement was false, no conviction can be had because the law regards the oath which was taken by the defendant as balance in a legal sense by the oath of the man who says it was false, and, therefore, the proof is not legally sufficient to show that the alleged statement was false. There must be more than the evidence
52 of one witness to show the falsity of the statement charged.

With these general observations as to the elements of the

offense charged here we will consider the indictment that is being submitted to you. In brief, it is charged that at the investigation before Chairman Nye of the Special Committee of the Senate the defendant gave testimony under oath which was intentionally false and which he did not believe to be true. The testimony that is relied upon by the Government relates, in a general way, to what we may call "a candidacy of men for nomination as candidates for the office of United States Senator from Nebraska" and to a campaign as to such nominations. In the indictment the charge is, that the defendant gave false testimony in response to questions in which were used such words as "campaign", "assurance", "to finance", and other words in connection with those words. There is a definition of those words given by writers of dictionaries such as Webster in which sense a person might use the words. As to the word "campaign", after referring to what its meaning is in the military way, such as a campaign for a connected series of military operations and in metallurgy, Webster gives this definition: "A connected series of operations to bring about some desired result as is done in a military campaign, as a campaign against vice, especially political, an organized series of operations or a systematic effort to influence voters, etc., carried on before an election, a canvass." "Assurance" is defined by Webster as the act of assuring; a declaration tending to inspire full confidence; that which is designed to give confidence. The verb "finance" is thus defined: "to conduct the finances"; "to provide the capital for." What are you to understand was meant by the defendant in the questions and answers constituting the parts of the testimony which you are to consider? There is a common usage about the meaning of such words as "candidate" or "campaign" which is proper for you to consider. It is sometimes said that one is a candidate for president or is a candidate for senator after he has been nominated regularly and up until the time that he is elected or defeated. Then there is another use of the word "candidate" which is not uncommon when it is said that one is a candidate before the nomination. Perhaps more careful usage under those circumstances would be to say that he is a candidate for nomination for president or senator. But it is not uncommon to speak of one as a candidate for such office a long time before he is even nominated. So in using the word "campaign" there is a common usage to refer to a presidential campaign using the word in
53 the sense that after one has been nominated for president he is in a campaign, until the time of election. And there is another common usage to speak of a presidential campaign even before the nomination. In considering the meaning of the words in questions asked of the defendant and in the answers given by him, you have a right to consider the common usage and meaning or the various common meanings or usages of such words and the more exact meaning as defined by the dictionary, but even after considering those meanings still the test for you is, as I have said, to find out the meaning in which the defendant who gave the testimony in

tended in his answers and the meaning of the questions as the defendant understood the words used.

There are laws of Nebraska providing for primary elections which were in force at the time of the giving of this testimony and for some period before. Among other things those laws provided that there should be a primary election in August of certain years at which there might be a vote of electors voting on a printed official ballot to indicate their choice as between candidates for nomination as United States Senator. In order for one's name to appear upon the printed official ballot of a particular party to such a primary election, it was necessary that he should either have filed his application as a candidate to have his name placed upon the official party ballot to be voted on in that primary election, or that petitions of a thousand or more voters should have been filed asking that his name be placed upon the official printed ballot of that party as a candidate for that office and that in either case such written application should have been filed forty days prior to the date of the primary election. There were provisions by which candidates after having nominated themselves, as we will call it, by asking to have their names placed on the official ballot might withdraw, or by which a candidate might decline a nomination where petitioners had asked to have his name placed upon the official ballot. And there were other provisions by which, after the primary election, the names of others could be placed upon the ballot at the final election in November, who had been nominated by convention or by petition or otherwise, but these provisions are not material here because we do not have a situation involving such nominations.

There is evidence here that there was a decision by the Chief Justice in Nebraska, Charles A. Goss, that the nomination papers of George W. Norris of Broken Bow, were rejected and that by that decision the Secretary of State was directed not to place upon the official ballot at the primary election in August 1930, the
54 name of George W. Norris of Broken Bow, because the nomination papers for him had not been filed in time. You will recall that there is testimony that this election was to be held on August 12, 1930, and that the nomination papers of George W. Norris of Broken Bow, were filed in the office of the Secretary of State on July 5, 1930. You will observe from those dates that counting from July 5th on through the balance of the month there were 26 days left and adding the 12 days in August to the date the primary election was held made 38 days and that, therefore, there were not forty days remaining after the time the nomination papers of George W. Norris of Broken Bow, were filed with the Secretary of State and before the time when the primary election was held. The legal effect of such facts and of that decision are that George W. Norris of Broken Bow, was not and never had been entitled to have his name printed on the Republican ballot in the

primary election on August 12, 1930, as a candidate for United States Senator.

There is evidence in the case as to W. M. Stebbins, that on November 5, 1929, a petition had been filed with the Secretary of State containing a large number of names, more than one thousand, nominating him as a candidate upon the Republican official ballot at the primary election to be held in August 1930, that is, as a candidate for United States Senator, and that on November 12, 1929, Mr. Stebbins filed a statement with the Secretary of State accepting that nomination as such a candidate. Those facts did constitute Mr. Stebbins as a candidate for nomination on the Republican official ballot at the primary election for United States Senator from that time on unless he had taken steps to withdraw or which amounted to withdrawal, and there is no evidence that such withdrawal ever occurred.

There is evidence that on January 11, 1930, George W. Norris of McCook, filed his application for nomination as a Republican candidate for United States Senator and so far as the evidence shows no withdrawal of that nomination was ever made. So that there is evidence that from that time on George W. Norris of McCook, was a candidate for nomination on the Republican official ballot in the primary election in August 1930.

Now, turning to the charges in the indictment after its reference to the meaning and the appointment of the committee and the committee's acts, the taking of the testimony, we have the allegations as to the testimony given and as to its falsity and the Government is confined in a case of this kind to the exact false testimony alleged and must prove its falsity in the particular in which it is alleged it is false.

In the first count, it is alleged in substance that the testimony was false wherein Mr. Norris said in substance that he, the said George W. Norris of Broken Bow, Nebraska, had not received any money from anyone in his campaign, meaning the campaign for nomination of United States Senator at the primary election to be held the 12th day of August, 1930, and that he, the defendant, had received no assurance from anyone of financial support and backing or of help in financing his campaign as a candidate for the United States Senate. The Government relies in this prosecution on the claim that these allegations of what the defendant testified to before the Senate Committee is supported by testimony which the Government claims was given before such Committee substantially as follows:

"Q. Did you receive any money from anybody in this campaign?

"A. I did not.

"Q. Now what assurance did you have of financial support and backing?

"A. None whatever.

"Q. In your campaign?

"A. None whatever.

"Q. Did you get any assurance from anybody that they would help you, Republican, Democrats, Independent, or anybody say they would help you finance your campaign?

"A. No, sir."

The Government in this prosecution alleges that his testimony was false in that defendant had received from A. Paul Johnson $50, the exact description and denominations of which were unknown to the grand jury, for use in paying to the county treasurer of Custer County, Nebraska, the defendant's filing fee as a candidate for the office of United States Senator; and in that the defendant had received from A. Paul Johnson a United States Government bond in the sum of $500 to carry on a campaign for the United States Senate; and in that the defendant had received assurance communicated to the defendant from A. Paul Johnson of financial backing in his campaign.

Now, in a criminal case the indictment against the defendant is no evidence whatever of his guilt. You are not to consider the indictment as any evidence or as having any weight whatever in trying the question of the defendant's guilt or innocence. It is a mere writing of the charge that is to be tried. The defendant in any criminal case must be presumed to be innocent of the charge against him and innocent of all material elements of the charge against
56 him until such time as the evidence produced in the case convinces you of his guilt and overcomes the presumption of innocence. The burden of proof is upon the Government in any criminal case to establish the guilt of the defendant and the burden of proof upon the Government is not to establish it by a preponderance of the evidence but to establish his guilt beyond a reasonable doubt. When I say that the burden of proof is upon the government to establish his guilt it is meant that the United States must prove every material allegation of the indictment. Now what are the material allegations in this case? It is necessary for the government to prove that the United States Senate adopted the Resolution set out in the indictment; that pursuant to that Resolution the Vice President appointed the senators named in the indictment as members of that committee; that at a meeting of the committee as set out in the indictment at which four members of the committee were present, the committee authorized the chairman to act as a sub-committee and that Senator Nye acting as a chairman held a public hearing and investigation as provided for under the Senate Resolution at Lincoln, Nebraska, and that the defendant was called as a witness in that investigation and that he then and there took an oath before Senator Nye, as Chairman of that Committee, to testify truly, and that he did testify at Lincoln, Nebraska, on September 22, 1930, in substance and effect as alleged in the indictment. Then the burden of proof is upon the government to show that such testimony was on a material matter and was false and that the testimony was wilfully, that is, was intentionally false, and that the defendant at the time of giving the testimony did not

believe it to be true. The burden is upon the government to prove that this testimony was false, not in general, but in particulars alleged in the indictment in which it is alleged that said testimony was false. The defendant could not be convicted of falsity of testimony unless it was false as charged in the indictment and in the particulars in which the indictment charges that falsity consisted. As to the charge of false testimony given by the defendant, the government must prove that the defendant at the time and place charged did testify in substance and in effect that he, the defendant, had not received any money from anyone in this campaign, meaning the campaign for nomination of United States Senator at the primary election to be held August 12, 1930, or that at that time and place the defendant falsely testified that he had received no assurance from anyone of financial support and backing or of help in financing his campaign as a candidate for the United States
57 Senate, or that the defendant's testimony was false as to both of these charges. There was evidence given that the defendant on the next day after he had first testified before the Senate Committee again testified as follows:

"The CHAIRMAN. Now, Mr. Norris, do you want the story that you have told us of your entire connection with this campaign to stand as your story?

"Mr. NORRIS. Outside of I might make a few changes in it the same as Mr. Johnson has. He did give me $50 and on going to Missouri I mailed back to him the $50. I got a bank draft and mailed it to him after I got my commission check.

"The CHAIRMAN. Mailed it back to whom?

"Mr. NORRIS. To Mr. Johnson.

"The CHAIRMAN. You thought then Mr. Johnson was paying this $50?

"Mr. NORRIS. I borrowed it.

"The CHAIRMAN. Your borrowed it: Didn't you hear his testimony that some one had given that money to give you?

"Mr. NORRIS. No; besides that.

"The CHAIRMAN. You had borrowed something in addition to the filing fee of $50?

"Mr. NORRIS. Yes, sir.

"The CHAIRMAN. From Mr. Johnson?

"Mr. NORRIS. Yes, sir.

"The CHAIRMAN. You sent that back to him?

"Mr. NORRIS. You will find the transaction there.

"The CHAIRMAN. But you never made any reimbursement of this $50 you got for the filing fee?

"Mr. NORRIS. No, sir; I never paid him that back.

"The CHAIRMAN. Now, what other changes would you want to make in the story that you have told us?

"Mr. NORRIS. I believe that is all. I would like to go on tomorrow and make some changes.

"Mr. CHAIRMAN. Let us make whatever changes are needed there, and if you have made any untruthful statements, today, surely you know what they are and can correct them now?

58 "Mr. NORRIS. You mean yesterday?

"The CHAIRMAN. Yesterday.

"Mr. NORRIS. You have a copy of that there?

"The CHAIRMAN. No, we don't have a copy of that.

"Mr. NORRIS. That is all that I know, outside of——

"Mr. CHAIRMAN. That is all that you know? Now, what of this $500 that was given to you?

"Mr. NORRIS. That was given to me by Mr. Johnson and cashed at North Platte with my brother."

As to this testimony you are instructed that this testimony may be considered by you along with the other evidence on the question of whether or not considering what the defendant testified on the day prior and his act of testifying again the following day and what he said in his testimony, the defendant wilfully, that is, intentionally testified falsely in his testimony on the day before in the matters charged against him.

I have said that the burden of proof is upon the government to establish the guilt of the defendant beyond a reasonable doubt. What is the meaning of those words as applied in a case of this kind? The proof in a case of this kind must be sufficient to convince the judgment of an ordinarily prudent man with a conviction upon which he would act without hesitation in a matter of the highest importance to his personal interests. If the degree of proof in this case is such as would not impress the judgment of an ordinarily prudent man with a conviction upon which he would act without hestitation in a matter of the highest importance to his own personal interests, then the proof would not be beyond a reasonable doubt, but by a reasonable doubt you are not to understand that the proof must be beyond an unreasonable doubt. That is to say, you are not to understand that all doubt should be excluded. It is impossible in the determination of these questions to be absolutely certain. You are required to decide the questions submitted to you upon the strong probabilities of the case but the probabilities must be so strong as not to exclude all doubt or possibility of error, but, as to exclude reasonable doubt.

You, gentlemen of the jury, are the sole judges of the facts in the case. You are the sole judges of the testimony, not only what it was but what its value is. You are the sole judges of the credibility of the witnesses. You have the right to consider in determining

59 what weight you will attach to the testimony of any witness the means and opportunity he has for knowing that about which he testifies and his ability to remember and relate. You have a right to consider any interest that any witness has in giving his testimony; if he had a financial interest in the result of the case you would have a right to consider that; if he has an interest other than

financial, you would have a right to consider that. If the jury believe from the evidence that any witness has wilfully sworn falsely on this trial to any matter or thing material to the issues in this case, then the jury are at liberty to disregard his entire testimony except in so far as it has been corroborated by other credible evidence or by facts and circumstances proved at the trial.

So far as I have given you my recollection of the evidence, Gentlemen of the Jury, I have given it to you as my memory has served, but you will understand that you are to be guided entirely by your recollection of the evidence and I have not undertaken to state the evidence even in part except for the purpose of making more clear the legal principles that should be considered in determining this case.

You, Gentlemen of the Jury, took an oath to decide this case upon the law and on the evidence. Notwithstanding any appeals that have been made to you, you should not decide this case on any other consideration. It would not be proper to render a verdict for its effect on public opinion or as an example or because of any feeling of resentment or sympathy, or because of any effect that it might have on politics or on the public or on anyone. When your verdict renders your judgment based solely on the law and on the evidence in the case you have performed your whole duty and fulfilled the oath which you have taken.

Now, there will be given to you when you go to your jury room a copy of that portion of the indictment which is submitted to you, a form of verdict which says, "We find the defendant blank guilty." That, there is a blank before the word "guilty" in which you may write the word "not" if you find the defendant not guilty. If you find the defendant guilty, the verdict is in proper form, but in either case before the verdict is returned into court it should be signed by the foreman whom you will select and when you all return into the court with the verdict so signed, it is your expression of the fact that you have agreed upon the verdict in the form in which it is returned.

60 *Instructions requested by the defendant*

The defendant requested the Court to give the following instructions and the court refused to give any of the instructions so offered, to which defendant excepted:

"1. The Jury are instructed that the burden of proof in this case is upon the Government to establish to the satisfaction of the Jury beyond a reasonable doubt the truth of every essential element of the crime charged and every material allegation of the indictment. The defendant is presumed to be innocent of the crime charged until such time as his guilt is proven by competent evidence beyond a reasonable doubt. (Refused. Defendant excepts.)

"2. The Jury are instructed that the indictment in this case or the fact that an indictment has been filed against the defendant is not to

be taken or considered by you as any evidence whatever of the guilt of the defendant. Such indictment contains simply the charge or allegations made necessary under the law as a basis upon which an accused is to be tried. (Refused. Defendant excepts.)

"3. The Jury are instructed that the law encourages the correction of erroneous and even intentionally false statements made by a witness and if you find in this case that the defendant corrected any false or erroneous statements he might have made while a witness before the Senate Subcommittee, then you will find the defendant not guilty. (Refused. Defendant excepts.)

"4. The Jury are instructed that even if you find that the defendant in this case made false answers to the questions which were put to him at the hearing before the Senate Committee in question, and if you also find that while this hearing was yet continuing and while the matter was yet pending before the Senate Committee, the defendant corrected any erroneous or false statements that were made, if any, then you will find the defendant not guilty (Refused. Defendant excepts.)

"5. The Jury are instructed that if you find that incorrect or false testimony was given by the defendant before the Senate Subcommittee and if you find that he corrected portions of his false or erroneous testimony, but that he did not correct all of his erroneous or false statements, and if you further find that he would have, in your opinion, corrected all statements that he made which were false or erroneous, had he been permitted to do so, then in that case,
61 you will also find the defendant not guilty. (Refused. Defendant excepts.)

"6. The Jury are instructed that if you find the defendant, in the latter portion of his examination before the Senate Committee, corrected statements that may have been incorrect or even intentionally false, made prior to the correction of the defendant, then you will find the defendant not guilty. (Refused. Defendant excepts.)"

The indictment which the trial judge submitted to the jury which is referred to in his instruction, is the identical indictment as shown on pages 5–15 hereof except that all matters included within brackets were not included in the draft of the indictment which the trial judge submitted to the jury.

In United States District Court

Praecipe for transcript

Filed February 4, 1936

To the CLERK OF SAID COURT:

Please make transcript of appeal in the above cause and include therein:

1. Indictment. (Count One only.)
2. Demurrer to indictment.
3. Order overruling demurrer.

4. Arraignment and plea.
5. Journal entries showing trial.
6. Verdict.
7. Motion for new trial.
8. Order overruling motion for new trial.
9. Judgment on verdict and sentence.
10. Notice of appeal.
11. Order allowing appellant to perfect appeal, dated January 2, 1936.
12. Assignment of errors with acknowledgment of service.
12½. Bill of exceptions.
13. Bond on appeal, and approval of court.
62 14. This praecipe, showing acknowledgment of service.

Dated this 4th day of February, 1936.

WM. E. SHUMAN,
BERT L. OVERCASH,
Attorneys for Defendant.

Received copy of the foregoing Praecipe this 4th day of February, 1936.

BARLOW NYE,
Assistant District Attorney.

Stipulation of counsel approving bill of exceptions

It is hereby stipulated by and between the parties hereto by their respective counsel that the foregoing transcript of Evidence, motions, objections, and rulings thereon, in the above cause correctly shows all necessary proceedings on said trial and is true and correct.

Dated at Lincoln, March 11th, 1936.

BARLOW NYE,
Assistant United States District Attorney.
WM. E. SHUMAN,
BERT L. OVERCASH,
Attorneys for Defendant.

In United States District Court

Order approving bill of exceptions

I, the undersigned, United States District Judge, who presided at the trial of the above entitled cause, do hereby certify that the foregoing bill of exceptions of defendant George W. Norris contains all the material facts, matters, things, proceedings, rulings, and exceptions thereto occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the said trial, and I further certify that the exhibits referred to in the foregoing bill of exceptions constitute all of the exhibits introduced in evidence at said trial, and I hereby make all of said exhibits a part of the foregoing bill of exceptions, and I hereby settle and allow the foregoing bill of exceptions as a full, true, and correct bill of

exceptions in this cause and order the same filed as a part
63 of the record herein, and direct the Clerk of this Court to transmit said bill of exceptions to the Circuit Court of Appeals for the Eighth Circuit.

Dated this 20th day of March, 1935.

THOS. C. MUNGER,
United States District Judge.

[Clerk's Certificate to foregoing transcript omitted in printing.]

64 [Appearances of counsel omitted in printing.]

65 In United States Circuit Court of Appeals

Order of submission—October 5, 1936

This cause having been called for hearing in its regular order, argument was commenced by Mr. William E. Shuman for appellant, continued by Mr. Joseph T. Votava, United States Attorney, for appellee, and concluded by Mr. William E. Shuman for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

66 In United States Circuit Court of Appeals, Eighth Circuit

No. 10,553.—November Term, A. D. 1936

GEORGE W. NORRIS, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Nebraska

Mr. William E. Shuman (Mr. Bert L. Overcash was with him on the brief) for Appellant.

Mr. Joseph T. Votava, United States Attorney (Mr. Ambrose C. Epperson, Assistant United States Attorney, Mr. Fred. G. Hawxby, Assistant United States Attorney, and Mr. Barlow Nye, Assistant United States Attorney, were with him on the brief) for appellee.

Before GARDNER, SANBORN, and FARIS, Circuit Judges

Opinion—November 19, 1936

FARIS, Circuit Judge, delivered the opinion of the Court.

Appellant, convicted of perjury and as punishment therefor sentenced to three months in jail, and fined one hundred dollars, appealed in the conventional manner, as was then and now provided by rules in such case provided.

67 Except for the precise questions asked appellant by the Senate Subcommittee (hereinafter referred to as Committee) and his answers thereto, and the further questions raised by the alleged fact that he had in his testimony before the Committee purged himself of his alleged perjury, by correction and retraction, the case does not materially differ, either in fact or law, from the case of Seymour v. United States, 77 Fed. (2d) 577. The alleged perjury here considered, occurred in the same investigation by the same Committee, and under the same conditions and legal situation dealt with in the Seymour Case, and so such further facts as may be deemed not sufficiently relevant as to render repetition necessary here, may be read by the curious in the Seymour Case, supra.

In the case at bar, the questions propounded to appellant, by the Committee, and his answers thereto, which are alleged to have been false, were as follows:

"Q. Now what assurance did you have of financial support and backing?

"A. None whatever.

"Q. In your campaign?

"A. None whatever.

"Q. Did you get any assurance from anybody that they would help you—Republican, Democrat, Independents, or anybody say they would help to finance your campaign?

"A. No, sir.

"Q. Did you receive any money from anybody in the campaign?

"A. I did not."

It is urgently contended by appellant that upon a strict construction (which it is insisted the law grants to him) his answers were truthful, and for this reason among others, the trial court should have directed a verdict in his favor, as he properly and procedurally prayed.

The second point of difference between the instant case and the Seymour Case, supra, is as forecast, that, the alleged perjury occurred on September 22, 1930; but that appellant, at his own request, and while the hearing and investigation were by the Committee current, and unfinished, again took the witness stand on September 23, 1930, and the following proceedings were had, and the following questions and answers were asked of and made by him:

68 "Q. Now Mr. Norris, do you want the story that you have told us of your entire connection with this campaign to stand as your story?

"A. Outside of, I might make a few changes in it, the same as Mr. Johnson has. He did give me $50.00. I got a bank draft and mailed it back to him after I got my commission check.

"Q. Mailed it back to whom?

"A. Mr. Johnson.

"Q. You thought, then, Mr. Johnson was paying this $50?

"A. I borrowed it.

"Q. You borrowed it? Didn't you hear his testimony that someone had given him that money to give you?

"A. No; besides that.

"Q. You borrowed something in addition to that filing fee, $50?

"A. Yes, sir.

"Q. From Mr. Johnson?

"A. Yes, sir.

"Q. You sent that back to him?

"A. You will find the transaction there.

"Q. But you never made any reimbursement of the $50 you got for the filing fee?

"A. No, sir; I never paid him that back.

"Q. Now, what other changes would you want to make in the story you have told us?

"A. I believe that is all. I would like to go on tomorrow and make some changes.

"Q. Let us make whatever changes are needed there, and if you have made any untruthful statements today surely you know what they are and can correct them now.

"A. You mean yesterday?

"Q. Yesterday.

"A. Do you have a copy of that there?

"Q. No; we don't have a copy of that.

"A. That is all that I know, outside of——

"Q. That is all that you know? Now, what of this $500 that was given to you?

"A. That was given to me by Mr. Johnson and cashed at North Platte with my brother."

Based upon the above evidence, given in the hearing before the Committee, appellant now contends that either a directed
69 verdict in his favor should have been ordered by the court, or at least, that certain instructions offered by him upon the trial and refused by the court should have been given.

These refused instructions were as follows:

"The Jury are instructed that even if you find that the defendant in this case made false answers to the questions which were put to him at the hearing before the Senate Committee in question, and if you also find that while this hearing was yet continuing and while the matter was yet pending before the Senate Committee, the defendant corrected any erroneous or false statements that were made, if any, then you will find the defendant not guilty.

"The Jury are instructed that if you find the defendant, in the latter portion of his examination before the Senate Committee, corrected statements that may have been incorrect or even intentionally false, made prior to the correction of the defendant, then you will find the defendant not guilty."

As forecast, it is urgently insisted here, by appellant's learned counsel, that neither of the four answers of appellant was false; but

each of them was strictly true. This insistence is bottomed on the alleged fact that appellant had never engaged in, nor was he at all involved in a campaign, because his intended campaign for United States Senator, had been, after he had filed his application and certificate, cut short by the decision of the Supreme Court of Nebraska, on the ground that his application had been untimely filed, and so he was not permitted to have a place on the ticket to be voted August 12, 1930, at the primary election. He had filed this application with the Secretary of State of Nebraska on the 5th day of July 1930, only some thirty-eight days prior to the day of the primary election. Since the Nebraska statute required all such applications to be filed not less than forty days before such primary election, the Supreme Court of Nebraska held, by a judgment rendered on July 18, 1930, that appellant's application was untimely filed and ordered that appellant's name should not be put on the ballot.

So, since all of the questions, except one asked and answered by appellant referred to a campaign, it is insisted that appellant answered these questions with absolute truth, because he contends, he never engaged in a campaign; for the simple reason that the
70 ruling of the Nebraska court prevented the placing of his name on the ballot. So, it is seriously urged, that a question to appellant about any matter pertaining to a campaign, or to his campaign is a question about a non-existing thing. The insistence clearly involves the most attenuated casuistry. Nothing is clearer, from this record and the record in the case of Seymour v. United States, supra, which, because this case and that one are interrelated, we are permitted to notice, (Freshman v. Atkins, 269 U. S. 121) than that the word "campaign" as used in this case and on the hearing before the Committee, was fully and clearly understood by both appellant and the members of this Committee. It meant as the context shows, the acts and efforts of the appellant to bring about his nomination as the Republican candidate for the office of United States Senator from Nebraska, and everything indicates that appellant so understood it when he answered the three questions which contained the word. True, divers circumlocutory phrases could have been substituted for the word "campaign", which would have described more graphically the abysmally sordid political trickery attempted to be worked by appellant and those who conspired with him. Many of these synonymous circumlocutions are obvious, but the use of such of them, by the Committee, as would have served to characterize the situation accurately, might well have seemed to prejudge the finding of the Committee. The word campaign is in the public domain. It has no technically legal use. If it had, many of the cases cited to us by the appellant might well be in point. The meaning of the word campaign, when applied to a candidacy for an office is known of all men. True, its constituent elements—the things which are done in a campaign—differ from zero to infinity. The word means, when applied to a personal political candidacy, all of the things and neces-

sary legal and factual acts done by the candidate and his adherents, in an effort to obtain a majority or plurality of the votes to be cast in any election for a public office. When it is necessary, as in Nebraska, to pay a filing fee, and file with the Secretary of State an application for a place on a ticket to be voted at a primary election, and these things are done, two of the constituent elements of a campaign for an office have been done. In short, a campaign for a public office in a public election, merely and simply means, running for office or candidacy for office, as the word is used in common parlance and as it is understood by the man in the street. What further may
71 be done by the candidate after announcing his candidacy, or after compliance with local statutes by which he becomes a legal candidate, rests in the discretion of the candidate and in the wisdom (or folly) of his friends. He may not spend one dollar, or he may spend many—but not now, as regulated by law, too many. He may "sit on the front porch", and let the voters come to him, or he may "make a swing around the circle" and personally go after the voters. So much is said in order to make plain the view, that the meaning of the word campaign, when applied to one running for a public office, has no relation to the nature, or sum, that is, quantity or quality of the efforts put forth; for such efforts may be few, many, or even none. Just prior to appellant's answering the crucial questions here under discussion, he had testified before the Committee as to the circumstances and reasons for his filing an application to be put on the primary ticket as a candidate for United States Senator. While much, if not all of this testimony was false, evasive and wholly disingenuous, as this record now indicates, it yet clearly indicates we repeat, that he knew precisely what was meant by the word campaign, when that word was used in the questions asked him.

When appellant filed his application for a place on the ticket to be voted at the primary election, he became in effect a candidate for the office of United States Senator from Nebraska, for by that public act he expressed his desire for the office and his willingness to accept it. This desire and willingness he never voluntarily renounced. He was running for office; he was a candidate for office, (see, Adams v. Lansdon, 18 Idaho 483; Leonard v. Commonwealth, 4 Atl. 220; State v. Bates, 102 Minn. 104), at least from July 5, 1930, when he filed his verified application, till July 18, 1930, when the Supreme Court of Nebraska ordered that his name be omitted from the ticket. Whether he did any more, or whether he did any other act to forward his candidacy is wholly immaterial; surely, the question whether he did few or many things has no bearing upon the meaning of the word campaign; for the simple reason, that if the inquiry shall be as to how many things and the nature thereof, are necessary to constitute a campaign, an answer becomes impossible, for no criterion exists as to the nature, number, quantity or quality of things done, which would enable us to say that on the one side a campaign exists, and on the other side there is none.

72 We are constrained to the view that the argument advanced is hypercritical, and so disallow it without more. It follows, that the trial court did not err in refusing to direct a verdict in favor of the appellant on the ground that as a matter of fact, appellant's answers were true. It is clear that his first answer was false, upon any view.

After the charge to the jury, to which otherwise no exceptions were taken, appellant requested the court to charge the jury touching the legal effect of appellant's second appearance on the stand and his change and alleged correction of his testimony. These instructions appear above in the statement of the case. The court below refused to give these instructions or either of them and appellant excepted.

We are constrained to the opinion that this refusal constituted error. As early at least, at 1669 (See, Roy v. Carr, 1 Siderfin's Rep. 418) it was held by the King's Bench in England, that a false answer in chancery is purged of perjury, if, in a subsequent answer filed in the cause, the false answer is corrected. From the above case seemingly, the well-settled modern rule had its origin. This rule is well stated in Bishop on Criminal Law (9th Ed.) Sec. 1044a, thus:

"The law encourages the correction of erroneous and even intentionally false statements on the part of a witness and perjury will not be predicated upon such statements when the witness, before the submission of the case, fully corrects his testimony. Says the New York Supreme Court 'a judicial investigation, or trial has for its sole object the ascertainment of the truth, that justice may be done, it holds out every inducement to a witness to tell the truth by inflicting severe penalties upon those who do not. This inducement would be destroyed if a witness could not correct a false statement except by running the risk of being indicted and convicted of perjury.'"

Ruled cases upon the point are few, but so far as we can find unanimous in upholding the view of the law on the point taken in Mr. Bishop's excellent work, quoted above. (See, People v. Brill, 165 N. Y. S. 65; Henry v. Hamilton, 7 Blackf. (Ind.) 506; People v. Gillette, 111 N. Y. S. 133; Brannon v. State, 94 Fla. 656, 114 So. 429; Bijur v. Bendix, 285 F. 974). In fact no case, called to
73 our attention by counsel, or which we have been able to find, contravenes the law upon the point as written by Mr. Bishop. Even two of the three cases cited herein by appellee affirm it as being the law.

Counsel for appellee, however cites and strongly relies on the case of Seymour v. United States, 77 F. (2d) 577, 582, decided by this court, which is as said already an interrelated case and which arose out of perjury committed by the appellant therein, one Seymour in the identical hearing before the Committee, which is involved in the instant case. In the Seymour Case, supra, we used this language:

"This situation is that, if false material testimony was knowingly given, perjury had been committed and nothing thereafter done could

alter that situation, while if such testimony was the result of an innocent mistake it was not perjury."

If the facts in the Seymour Case, supra had been upon the point under discussion, similar to the situation here confronting us, the last-quoted language would constitute a statement of the legal rule on the point in fairly direct contradiction of what we deem to be the true rule of law. But the facts in the Seymour Case, must be held in mind. The accused therein had given before the same Committee, testimony which seemingly was the subject of newspaper comment after appellant here and others had testified. Upon seeing such comment, Seymour wired from Denver, to the Chairman of the Committee among other things not pertinent, thus: "In justice to the Committee and myself I will be glad to appear before the Committee at Washington any time after the middle of November, which may suit your convenience. At present my time is fully occupied with duties requiring my personal presence here." Based on the above telegram, Seymour, insisted on an appeal to this court that an instruction should have been given by the trial court in his case bottomed upon the above telegram, as a bona fide, but incompleted attempt to correct false testimony.

In responding to the latter contention and in disallowing it, this court used the language quoted above from the opinion in the Seymour Case, upon which appellant relies. But the facts here upon the point under discussion, in this instant case are not at all similar to the facts in the Seymour Case. Here appellant, on the day following his giving of the answers now here relied on by
74 appellee as constituting perjury, and of course, while the hearing and investigation had not been completed and was continuing, was again called to the witness stand and he there and then corrected, or attempted to correct, the false answers given by him on the day before. In the Seymour Case the accused therein never again took the stand, nor did he correct, or attempt to correct, the false statements made by him as a witness in the hearing. In fact, his telegram to the Committee does not by its language amount to a request that he be allowed to correct anything he had theretofore sworn to, nor is there any admission or intimation in it that he had sworn falsely. So, it did not even constitute "a bona fide but incompleted attempt to correct false testimony." At best, it simply indicated his willingness, at his own convenience, to give further testimony; whether true or false, does not appear.

It was in response to this situation and contention, that this court used the quoted language found in the opinion in the Seymour Case, and which is relied on by appellee as a categorical ruling by this court, that a witness, who has sworn falsely, may not under any circumstances thereafter purge himself thereof. The language relled on by appellee, when considered in the light of the facts up for judgment in the Seymour Case was obiter dictum merely. For undoubtedly the rule, to be applied in a situation such as is presented

in the case at bar, is that when a witness in a trial, hearing, or investigation has, whether intentionally or unintentionally given false, or perjured testimony; but afterwards in the same trial, or hearing, or investigation, and before such trial, etc., has been completed, fully corrects all false answers and statements theretofore made by him, he cannot be successfully prosecuted for perjury. Of course he must fully and fairly correct all false statements formerly sworn to by him, and on which a prosecution for perjury could otherwise be bottomed. He cannot purge himself thereof only in part, or doubtfully and evasively, but must do so fully. If what he last swore comprehends a full correction, his last testimony comprises the ultimate facts in the case, so far as the witness is concerned. If he shall correct fully and fairly, every false statement theretofore made by him, on which a charge of perjury might be, or is, as here bottomed, it may well be that the matter is one for the court, and in a trial for perjury, may well warrant a directed verdict of acquittal in favor of the accused.

75 But if his correction is doubtful or evasive, or not full and fair, the question whether he has purged himself is one for the jury.

The charge asked by appellant in the first clause of the quoted requested charges is upon one view ambiguous and not clear. But the language of the last clause of the requested charge, we think, so far as it goes, correctly states the law, and should have been given. Upon another trial, if the proven facts shall be similar upon the point to those in the record before us, some such charge as that suggested below should be given to-wit:

The jury are charged that the law encourages the correction of erroneous and even intentionally false statements made by a witness upon a trial or hearing, and so, if you shall find and believe from the evidence that defendant made false answers to the questions or any of them which were put to him at the hearing before the Senate Subcommittee (which questions are set out in the indictment and which questions the court has already in this charge called specifically to your attention), yet that defendant, while the hearing was continuing and unfinished again took the witness stand and then and there fully corrected all erroneous or false statements, if any, which had theretofore been made by him in answer to said questions, you should find the defendant not guilty.

Appellant further contends that the trial court erred in refusing to permit him to testify on the trial below that he was willing, when he returned to the witness stand in the hearing before the Committee to correct any other part of his false statements made by him when first testifying, if he had been permitted to do so. This appellant urges, should have gone to the jury as bearing on his intent.

On this point the record quoted above herein shows seemingly all that occurred when appellant last took the stand in his effort to retract. All this was before the jury. He did say that he would like

to go on the stand "tomorrow and make some further changes." To that request the Committee said to him, in effect, that he could make such changes at that time, as he desired to make, and in effect refused to hear him on the next day. In short, he was afforded ample opportunity to tell the whole truth which no one knew better than he.

76 The Committee was under no obligation to subserve his further convenience, or to afford him more than one opportunity to fully retract. This one opportunity was accorded to him, and in the state of the record on the point we are of opinion the trial court did not err in refusing to permit him to answer touching the undisclosed state of his mind when his retraction, or attempted retraction, was made. The authority for the contention (48 C. J. 828, citing only the case of Thrasher v. State, 237 P. 139) is not so clearly in point in its facts, as to convince that the contention is well taken. The desire to correct should be indicated by facts occurring during the trial or hearing, and not by an alleged state of mind existing some five years after the lawful right to correct had expired.

As already indicated, the alleged perjury of appellant was committed at the identical hearing before the Committee, heretofore considered by this court in the Seymour Case, supra. In that case appellant here was permitted to file a brief as amicus curiae, in which, as also in the briefs of Seymour, all questions now raised (except those discussed above in this opinion) were presented and ruled by this court against the contentions of appellant herein. After again considering these questions, we are not convinced that the views then held and expressed were erroneous upon any rule of law on any question up for judgment in that case. As already said, the question of retraction pending the hearing was not in that case; otherwise in principle the two cases are wholly similar. True it is, that in the Seymour Case the object intended to be accomplished by political trickery was in aid of the candidacy at the primary election of one Stebbins who was running against Senator George W. Norris of McCook, Nebraska; while here in the instant record, this object appears to have been the more innocent one of getting rid of appellant as a proposed candidate for Railroad Commissioner. Yet the fact remains that appellant was, for a time at least a candidate for the nomination at the primary election for Senator of the United States from Nebraska. So, the difference is not deemed of sufficient legal importance to change the views we have heretofore announced upon the situation.

Since we are of opinion that whether appellant fairly and fully purged himself of all of the false statements charged to have been made by him is not clear on this record, and since, in effect, he based a part at least of his retraction on the testimony of the witness Johnson, he should be permitted, if he is so advised, to

77 offer the whole of the testimony given by Johnson when the latter corrected his own statements made to the Committee when he was recalled by the Committee. We think the indictment was insufficient as against the attacks made on it.

It follows that for the error in refusing to submit to the jury the question whether appellant had fully and fairly retracted and corrected his original false statements the case should be reversed and remanded for a new trial, which accordingly is ordered.

78 In the United States Circuit Court of Appeals, Eighth Circuit

No. 10553

GEORGE W. NORRIS, APPELLANT

vs.

UNITED STATES OF AMERICA

Judgment.—November 19, 1936

Appeal from the District Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, reversed without costs to either party in this Court.

It is further ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

79 [Clerk's Certificate to foregoing transcript omitted in printing.]

80 Supreme Court of the United States

Order allowing certiorari

Filed February 1, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 41140. U. S. C. C. of Appeals, Eighth Circuit. Term No. 600. The United States of America, petitioner, vs. George W. Norris. Petition for writ of certiorari and exhibit thereto. Filed December 24, 1936. Term No. 600 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937